

DEPARTMENT OF JUSTICE

SUPREME COURT OF THE UNITED STATES

APPEAL FROM DISTRICT COURT

No. 173

BERKELEY CORPORATION AND CLAY ARTHUR PIERCE
PLAINTIFFS IN ERROR

VERSUS
THE FIRST NATIONAL BANK

IN ERROR TO THE SUPREME COURT OF THE STATE OF
MISSISSIPPI

FILED NOVEMBER 11, 1907

CLERK

(27,979)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 622.

PIERCE OIL CORPORATION AND CLAY ARTHUR PIERCE,
PLAINTIFFS IN ERROR,

vs.

PHOENIX REFINING COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

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Return to Writ.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, Oklahoma, this the 6th day of November, A. D. 1920.

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
 By REUEL HASKELL, JR.,
Deputy.

1 Filed in Supreme Court of Oklahoma Oct. 28, 1920. William M. Franklin, Clerk.

Citation.

UNITED STATES OF AMERICA, ss:

To Phoenix Refining Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the date of the service of this citation, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Oklahoma, wherein Pierce Oil Corporation and Clay Arthur Pierce are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, The hand of the Honorable, the Chief Justice of the Supreme Court of the United States, this 28th day of October, in the year of our Lord one thousand nine hundred and twenty.

ROBT. M. RAINEY,
*Chief Justice of the Supreme Court
 of the State of Oklahoma.*

Attest:

[Seal of the Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma,
 By REUEL HASKELL, JR.,
Deputy.

1-622

We, the undersigned Attorneys of record for Phoenix Refining Company, defendant in error, do hereby accept service of the foregoing citation this 28th day of October, 1920.

STUART, SHARP & CRUCE,
Attorneys for Phoenix Refining Company.

2 Filed in Supreme Court of Oklahoma Aug. 23, 1920.
William M. Franklin, Clerk.

Petition for Writ of Error.

To the Honorable Robert M. Rainey,
Chief Justice of the Supreme Court of Oklahoma:

Now comes Pierce Oil Corporation and Clay Arthur Pierce, Plaintiffs in error, and represent that on the 25th day of May, 1920, a judgment was entered by the Supreme Court of the State of Oklahoma, affirming the order and judgment of the Corporation Commission of the State of Oklahoma, in a proceeding pending before it, instituted by Phoenix Refining Company, a corporation, as plaintiff, to compel the said Pierce Oil Corporation to carry and transport the crude oil of said Phoenix Refining Company through the private pipe line of said Pierce Oil Corporation, and by which order and judgment the said Corporation Commission sought to compel said Pierce Oil Corporation, by virtue of a statute of the State of Oklahoma, to transport through said pipe line, constructed, owned and used by it for the purpose of supplying crude oil to its refinery and not dedicated to, or used by the public; that a petition for re-hearing was filed by the plaintiffs in error in said Supreme Court and that the same was denied and overruled by said court on July 6, 1920, and thereby the judgment of said Supreme Court became final.

3 And your petitioners averred in its answer and response to the petition of Phoenix Refining Company, filed with said Corporation Commission, that the order prayed for in said petition requiring and compelling said Pierce Oil Corporation to furnish to Phoenix Refining Company, or to the public, the use of its said pipe line, would amount to the taking of its property without due process of law and would contravene the Fifth and Fourteenth Amendments to the Constitution of the United States.

That at the trial of said cause, and upon their appeal from the order of said Corporation Commission, the petitioners contended that, to so construe the said statute of Oklahoma as to make the petitioners amenable thereto with respect to their pipe line in question, would render the said statute invalid as in violation of the fifth and Fourteenth Amendments to the Constitution of the United States.

That notwithstanding these facts the Supreme Court of Oklahoma, construed the said statute as applicable to your petitioners with respect to their said pipe line, and decided that, with respect to said pipe line, they were common carriers under and by virtue of such statute and within the meaning thereof, and did further decide that the petitioners were estopped to contend or claim that the construe-

tion and application of said statute to your petitioners with respect to their said private pipe line was in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and therefore decided that the order of the Corporation Commission and the enforcement thereof was not a taking of the petitioners' property without due process of law, nor in contravention of the Fifth and Fourteenth Amendments to the Constitution of the United States.

And your petitioners further aver that in the aforesaid judgment and proceedings errors were committed to the prejudice of the petitioners, all of which will more fully appear from the assignment of errors which is filed herewith.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of Oklahoma, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States as provided by law.

Dated this 23rd day of August, 1920.

P. C. WEST,
A. A. DAVIDSON,
*Attorneys for Pet'ioners and
Plaintiffs in Error.*

In the Supreme Court of the United States.

Filed in Supreme Court of Oklahoma, Aug. 23, 1920. William
M. Franklin, Clerk.

PIERCE OIL CORPORATION AND CLAY ARTHUR PIERCE, Plaintiffs in
Error,

VERSUS.

PHOENIX REFINING COMPANY, a Corporation, Defendant in Error.

Error to the Supreme Court of Oklahoma.

Assignment of Errors.

And now come Pierce Oil Corporation and Clay Arthur Pierce, petitioners and plaintiffs in error, by P. C. West and A. A. Davidson, their attorneys, and in connection with their petition for a writ of error, show, that in the record and proceedings, and in the rendering of the judgment and decision of the Supreme Court of Oklahoma, in the above entitled cause, manifest error has intervened to the prejudice of these petitioners and plaintiffs in error, in this, to-wit:

First. The Court erred in holding and deciding that Section 4309 of the Revised Laws of Oklahoma, of 1910, being Section 4, of an Act of the Legislature of Oklahoma, entitled:

"An Act to regulate all corporations, associations and persons engaged, in this state, in the business of carrying crude petroleum, or its products, through pipe lines; to regulate operators of oil
6 wells and refineries of crude petroleum and its products, regulating the purchasing of mineral oil by pipe lines, providing punishments for violations thereof, and declaring an emergency,"

approved March 27, 1909, was, as applied to the facts shown by the record herein, constitutional and did not violate the Fifth or Fourteenth Amendments to the Constitution of the United States, and did not deprive the plaintiffs in error of equal protection of the law.

Second. The Court erred in holding and deciding that the judgment and order of the Corporation Commission of Oklahoma, compelling the plaintiffs in error to carry oil, as a common carrier, through their pipe line, by virtue of the said Section of the Statute of Oklahoma, was not a taking of their property without due process of law.

Third. The Court erred in holding and deciding; that the plaintiffs in error, by reason of their having built their pipe line after the passage of the Act aforesaid, were estopped to contend or claim that such Act construed as applicable to the private pipe line of the plaintiffs in error, and making such line a common carrier, was in contravention of the Fifth and Fourteenth Amendment- to the Constitution of the United States.

Fourth. The Court erred in deciding and holding that the use by Phoenix Refining Company, or by the public, of the pipe line of the plaintiffs in error against their consent was not a taking of their property without due process of law.

Fifth. The Court erred in construing the order and judgment of the Corporation Commission of Oklahoma, as involving a
7 finding that the plaintiffs in error were, in point of fact and with respect to said pipe line, common carriers of oil.

By reason whereof the petitioners and the plaintiffs in error, pray that the said judgment of the Supreme Court of Oklahoma, may be reversed and judgment rendered in favor of the plaintiffs in error, and for their costs.

Dated this 23rd day of August, 1920.

P. C. WEST,
A. A. DAVIDSON,
Attorneys for Plaintiffs in Error.

8 In the Supreme Court of the United States.

Filed in Supreme Court of Oklahoma, Aug. 23, 1920. William M.
Franklin, Clerk.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Plaintiffs in
in Error,

versus

PHOENIX REFINING COMPANY, a Corporation, Defendant in Error.

Order Allowing Writ of Error.

On reading the petition of Pierce Oil Corporation and Clay Arthur Pierce for writ of error and the assignment of errors. and upon due consideration of the record of said cause:

It is ordered, that a writ of error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, as prayed for in said petition, and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioners and plaintiffs in error give security in the sum of One Thousand Dollars (\$1,000.); that the said plaintiffs in error shall procure said writ of error to effect and, if said plaintiffs in error fail to make their plea good shall answer to the defendant in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

9 In witness whereof, I have hereunto set my hand this 23rd day of August, 1920.

ROBT. M. RAINEY,

Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,

Clerk Supreme Court, Oklahoma,

By REUEL HASKELL, Jr.,

Deputy.

10 Filed in Supreme Court of Oklahoma Oct. 28, 1920. William M. Franklin, Clerk.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between Pierce Oil Corporation and Clay Arthur Pierce and Phoenix Refining Company wherein was drawn in question the construction and validity, as applied to a private pipe line used by the plaintiffs in error for the transportation of crude oil to their refinery, a statute of the State of Oklahoma, and the decision was in favor of its validity as so construed, and wherein was drawn in question the validity of an authority exercised under said state on the ground of its being repugnant to the Constitution of the United States and the decision was in favor of such validity, and wherein a right, privilege, and immunity was claimed under the Constitution of the United States and the decision was against such right, privilege, and immunity, a manifest error hath happened to the great damage of the said plaintiffs in error as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date thereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

11 Witness the Honorable Edward D. White, Chief Justice of the United States, the 28th day of October, in the year of our Lord one thousand nine hundred and twenty.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the District Court of the
United States for the Western District of Oklahoma.

Allowed by

ROBT. M. RAINEY,
*Chief Justice of the Supreme Court
of the State of Oklahoma.*

[Seal of the Supreme Court, State of Oklahoma.]

Attest:

WM. M. FRANKLIN,
Clerk Supreme Court, Okla.

By REUEL HASKELL, JR.,
Dep.

12 Filed in Supreme Court of Oklahoma Oct. 28, 1920. William M. Franklin, Clerk.

Bond.

Know all men by these presents: That Pierce Oil Corporation, a corporation, and Clay Arthur Pierce as principals, and The Aetna Casualty and Surety Company, of Hartford, Connecticut, as surety, are held and firmly bound unto Phoenix Refining Company, a corporation, in the sum of One Thousand and no/100 dollars (\$1,000.00) to be paid to the said Phoenix Refining Company, to which payment well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 26 day of October, 1920.

Whereas: the above named plaintiffs in error, Pierce Oil Corporation and Clay Arthur Pierce, have sued out a writ of error from the United States Supreme Court to the Supreme Court of Oklahoma, to reverse the judgment of said Supreme Court of Oklahoma, rendered on the 6th day of July, 1920, in the suit of Pierce Oil Corporation and Clay Arthur Pierce vs. Phoenix Refining Company.

Now, therefore, the condition of this obligation is such that, if the above named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages that may be adjudged, if they shall fail to make good their plea, then this obligation is to be void; otherwise to remain in full force and effect.

PIERCE OIL CORPORATION,
CLAY ARTHUR PIERCE,
By WEST, SHERMAN, DAVIDSON &
MOORE,

Their Attorneys.

THE AETNA CASUALTY AND SURETY
COMPANY,
By J. S. PEARCE,

Attorney in Fact.

[SEAL.]

Approved this 28th day of October, 1920.

ROBT. M. RAINEY,

Chief Justice of the Supreme Court of Oklahoma.

[Seal.]

Attest:

WM. M. FRANKLIN,

Clerk Supreme Court, Okla.

By REUEL HASKELL, JR.,

Deputy.

- 13 Filed in Supreme Court of Oklahoma Apr. 9, 1919. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 10550.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Appellants,

vs.

PHOENIX REFINING COMPANY and STATE OF OKLAHOMA, Appellee.

Petition in Error.

The appellants, Pierce Oil Corporation and Clay Arthur Pierce, complain of the appellees herein, Phoenix Refining Company and the State of Oklahoma, for that on the 7th day of December, 1918, the appellee, Phoenix Refining Company, obtained from the Corporation Commission of the State of Oklahoma a certain judgment, opinion and order, together with its findings of fact upon the evidence introduced and its written statement of the reasons upon which said judgment, opinion and order were based, and which said judgment, opinion and order requires and commands the appellant, Pierce Oil Corporation, to transport and that it should transport for the appellee, Phoenix Refining Company, such oil as Phoenix Refining Company was then producing from its wells in the Cushing Field in Oklahoma, and such other oil as appellant, Pierce Oil Corporation, may have available space to transport through its pipeline from said Cushing Field to Sand Springs, Oklahoma, That the said judgment, opinion and order were obtained in a certain proceedings then pending before said Corporation Commission in which the said Phoenix Refining Company was plaintiff and the said Pierce Oil Corporation and Clay Arthur Pierce were defendants.

A transcript certified by the Chairman of said Corporation Commission of the facts and evidence upon which said judgment, opinion and order were based, together with all the pleadings, motions, testimony, evidence, and the objections thereto and rulings thereon, and all such judgments, opinions and orders, and the written state-

ments of the reasons of said Commission therefor, is hereto attached as a case-made of such facts, evidence, rulings, judgment, opinion and orders of the Commission, marked "Exhibit A" and made a part of this petition in error.

And the said appellant allege and say that there is error in said record and proceedings, and in said findings, judgment and orders of said Corporation Commission in this, to-wit:

1. That the appellants filed with the said Commission their motion to vacate said judgment and order and for a new trial, which said motion was by the Commission over-ruled, and in which appellants say it committed error in that the said Commission should have vacated such judgment and order and granted appellants a new trial.

2. That the Commission erred in making the order complained of because the same was not based upon sufficient evidence and is contrary to the evidence introduced in said proceeding.

3. The Commission's judgment, opinion and order were not based upon valid and legal reasons and the same are contrary to law.

15 4. The Commission committed error in over-ruling the objection of the appellants to the introduction of evidence in said proceedings, and also in sustaining the objection of the appellee, Phoenix Refining Company, to evidence offered by the appellant.

5. The Corporation Commission erred in finding and concluding that the Pierce Oil Corporation was a common carrier and was engaged in the business of transporting oil within the meaning of the constitution and laws of Oklahoma.

6. The Commission committed error in finding and concluding that the Pierce Oil Corporation, in relation to its said pipeline and its use thereof came within and was subject to the provisions of the constitution of Oklahoma as contained in Section 4, Article 9 thereof, and that it came within and was subject to Sections 4304 to 4318, inclusive, of the Revised Laws of Oklahoma, 1910.

7. The Commission erred in revoking, cancelling and setting aside its order of February 7, 1918, granting to appellant exemption from the provisions of Chapter 53, Article 2, Revised Laws of Oklahoma, 1910.

Wherefore, appellants pray that said judgment, opinion and order of the Corporation Commission so obtained may be reversed, set aside and held for naught, and that the appellants may be restored to all rights and privileges in relation to the use of its said
16 pipeline and to all other things of which it has been deprived by the said judgment and order of said Corporation Commission.
mission.

BOYLE & PRIEST,
WEST. SHERMAN DAVIDSON &
MOORE,

Attorneys for Appellants.

Before the Corporation Commission of the State of Oklahoma.
No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHOENIX REFINING COMPANY, a Corporation, Complain-t,
vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

CASE-MADE AND CERTIFIED RECORD.

Be it remembered, That on the 8th day of March, 1918, the Com-plainant above named filed in the office of the Corporation Commis-sion of Oklahoma, a complaint against the above named defend-ants, which complaint is in words and figures as follows;

Corporation Commission of Okla.

Filed Apr. 8, 1919.

P. E. GLENN,
Secy.

Filed in Supreme Court of Oklahoma Apr. 9, 1919.

WILLIAM M. FRANKLIN,
Clerk.

18 Before the Corporation Commission of the State of Oklahoma.

PHOENIX REFINING COMPANY, a Corporation, Complain-t,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Complaint.

1.

The plaintiff, Phoenix Refining Company, is a corporation, or-ganized under the laws of the State of Oklahoma, while the defend-ant, Pierce Oil Corporation, is a corporation organized under the laws of the State of Virginia, and the defendant, Clay Arthur Pierce, is a citizen of the State of Missouri.

2.

The plaintiff is engaged in operating a refinery at the town of Sand Springs, Oklahoma, at which place it receives crude petroleum

and there refines the same, extracting therefrom gasoline, refined petroleum oil and other products derived from the refining of crude petroleum oil.

3.

In connection with its business as a refinery, the plaintiff owns and operates various oil wells situated in Sections 18 and 19 Township 18 North, Range 7 East, and in the vicinity near thereto in Creek County, in the State of Oklahoma, said wells having a daily production of 1,000 barrels, and the oil produced from the same is necessary to the successful and profitable operation of the plaintiff's refinery at the City of Sand Springs.

3.

The defendant, Pierce Oil Corporation, is the owner of a pipe line running from what is known as the Cushing Oil Field, in Creek County, Oklahoma, to the said City of Sand Springs, Oklahoma in which for many years the said defendant has, for hire, transported oil from said Cushing Oil Field, to the said City of Sand Springs, and to various other towns in the State of Oklahoma; and, has, during all of said time, been a common carrier, and as such, subject to the laws of the State of Oklahoma, and subject to the power of this commission, to make such orders and rules with reference to the transportation of oil, and charges that may be made for such services, as may be prescribed by this commission.

4.

That defendant, Clay Arthur Pierce, is a stockholder and officer in the said Pierce Oil Corporation, but what office he holds, this plaintiff is unable to state, but, the plaintiff charges the fact to be, that in the making of the contract hereinafter referred to, the said Pierce was acting for, and on behalf of his co-defendant, the Pierce Oil Corporation.

5.

Since the 20th day of July, 1915, the defendants under three contracts, entered into respectively on the 20th day of January 1915, the 23rd day of February, 1916, and the 26th day of February, 1917, have been transporting to this plaintiff crude oil from the said Cushing Field to its refinery in the said City of Sand Springs, at a uniform charge of ten cents a barrel of 42 gallons; said oil being transported through defendants' said pipe line, and being the oil taken from the plaintiff's wells aforesaid.

6.

The plaintiff states that there is no other pipe line running into the city of Sand Springs from the said Cushing Fields by which it can transport its oil, and that unless it can get transportation of the same through defendants' pipe line,

it will be unable to use said oil at its refinery, and will suffer great and irreparable damage, the exact amount of which is incapable of accurate estimation.

7.

The plaintiff states that on, or about the — day of March, 1918, this plaintiff was notified by the defendant, Pierce Oil Corporation, that on the 26th day of February it would increase its charge for transportation of oil to plaintiff, to 20¢ per barrel of 42 gallons, and that on the 21st day of March, 1918, it would refuse to transport for plaintiff any oil from its wells in the said Cushing fields to its refinery, at any price. Plaintiff states that if the defendant is permitted to carry out its threat to cease transportation of oil for plaintiff, it will not only suffer great inconvenience in the conduct and management of its business, but will suffer irreparable damage.

8.

Plaintiff states that many other producers of oil and refiners of oil are depending upon the aforesaid pipe line to transport oil from the said Cushing Field to the said city of Sand Springs, Tulsa and other cities in the State of Oklahoma, and that the public is interested in having an order made by this commission designating the charges that may be made by the said Pierce Oil Corporation and its agents and lessees, for the transportation of oil from the said Cushing field to the said towns of Tulsa, Sand Springs and others.

Wherefore, the plaintiff prays that the defendants be given due notice, and that upon final hearing, this Commission make an order compelling the defendants to continue to transport oil to this plaintiff from its wells in Cushing Field, to its refinery in Sand Springs, and that said order of the Commission designate the charge that may be made by the said defendant for such transportation.

STUART, CRUCE & RIDDLE,
Attorneys for Plaintiff.

21 And thereupon on said day there was issued in said cause a Summons which was duly served and returned, said Summons and the return thereof being in words and figures as follows:

22 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

PHOENIX REFINING COMPANY, a Corporation, Complain-t,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Summons.

STATE OF OKLAHOMA:

To the Sheriff of Oklahoma County:

You are hereby commanded to forthwith summons the Pierce Oil Corporation and Clay Arthur Pierce to appear before the Corporation Commission of Oklahoma at its office in the State Capitol Building, Oklahoma City, at 10.00 a. m. March 19th, 1918, to answer the complaint of the Phoenix Refining Company, wherein the said Phoenix Refining Company prays that the Corporation Commission make an order compelling the Pierce Oil Corporation and Clay Arthur Pierce to continue to transport oil to plaintiff from its wells in the Cushing fields to its refinery at Sand Springs, Oklahoma. Herein fail not, and make due return on or before the 18th day of March, 1918.

Dated at Oklahoma City, Okla., this 8th day of March, 1918.

CORPORATION COMMISSION.

W. D. HUMPHREY,

Acting Chairman.

_____,
Commissioner.

Attest:

[SEAL.] J. H. HYDE,
Secretary.

23 *Endorsement on Back.*

Received the within writ this 8th of Mch. 1918, & served same by delivering a copy to F. R. Hoffman, resident agent in person.

G. E. JOHNSON,

Sheriff Okla. County,

By J. H. HYDE,
Deputy.

24 And thereafterwards there was filed in said cause the Answer and Objections of said defendants, which Answer and Objections is in words and figures as follows:

25 Before the Corporation Commission of the State of Oklahoma.

No. 3278.

PHOENIX REFINING COMPANY, a Corporation, Complain-t,

VS.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Answer and Objections.

Comes now the defendants in the above entitled cause and deny each and every fact, matter and thing in plaintiff's complaint alleged, except as hereinafter specifically admitted.

Defendants show that the Pierce Oil Corporation is a corporation organized under the laws of the State of Virginia; that Clay Arthur Pierce is the president of said corporation; that said Pierce Oil Corporation is the owner of the pipe line referred to in plaintiff's complaint, extending from the Cushing field to Sand Springs, Oklahoma.

II.

Defendants for their second defense, demur to plaintiff's complaint for the reason that the same fails to set forth facts sufficient to constitute a cause of action against the defendants or either of them, and for the reason that said complaint fails to set forth facts sufficient to confer jurisdiction upon the Commission.

III.

Defendants admit that the plaintiff is engaged in operating a refinery at the town of Sand Springs, Oklahoma.

26

IV.

Defendants specifically deny that the plaintiff owns and operates various oil wells situated in Sections 18 and 19, Township 18 North, Range 7 East, and specifically deny that said wells have a daily production of a thousand barrels.

V.

Defendants specifically deny that the pipe line referred to in plaintiff's petition has at any time been a common carrier or has been operated as such, and specifically deny that the same is subject to the laws of the State of Oklahoma, and specifically deny that said pipe line or either of these defendants is subject to the power of this commission to make orders and rules with reference to the transportation of oil or charges therefor.

VI.

Defendants specifically deny that the pipe line of the Pierce Oil Corporation running from Sand Springs to Cushing is the only means by which oil can be transported into the City of Sand Springs from the Cushing field, and specifically deny that unless the Phoenix Refining Company can get transportation of oil through defendant's line it will suffer great and irreparable damage or will be unable to secure the transportation of oil from the Cushing field to its refinery.

VII.

Defendants specifically deny that many other producers of oil and refiners of oil, or either of them are depending upon the aforesaid pipe line to transport oil from the Cushing field to the City of Sand Springs, or to any other place in the State of Oklahoma, and specifically deny that the public is interested in having an order made by this Commission designating the charges that may be made by the Pierce Oil Corporation for the transportation of oil from the Cushing Field to the towns of Tulsa, Sand Springs and/or others.

VIII.

Defendants further show that heretofore in the year 1913 the Pierce Oil Corporation entered into the refining of oil in the State of Oklahoma and erected a refinery during said year at Sand Springs, Oklahoma, at a cost of approximately Two and one-half millions; that solely for the purpose of supplying oil to its said refinery and solely for said refinery needs, said Pierce Oil Corporation constructed the pipe line referred to in plaintiff's complaint, running from its said refinery at Sand Springs, Oklahoma, to the Cushing field; that no parts of the rights of way over which said pipe line was laid were secured by condemnation, but that said grants were all secured by purchase and the same were for the sake of convenience taken in the name of Clay Arthur Pierce.

That subsequent thereto and prior to the date hereof, the entire purchase price and consideration therefore was paid to said Clay Arthur Pierce by the Pierce Oil Corporation, and that said Clay Arthur Pierce has merely held the legal title in and to said line for the Pierce Oil Corporation; that all of the foregoing facts have been heretofore disclosed to the Honorable Corporation Commission of the State of Oklahoma.

That said Pierce Oil Corporation has not engaged in the business of transporting crude oil or petroleum through said line for hire or otherwise, and that said Clay Arthur Pierce has not engaged in such business; that said line has never been a common carrier line, but is and has been at all times solely a refinery line.

28 That heretofore said Pierce Oil Corporation and Clay Arthur Pierce have transported oil through said line for the Phoenix

Refining Company purely as a matter of accommodation to said company, and have charged therefor a nominal charge of ten cents per barrel for such transportation; that the ordinary, reasonable and usual charge for such transportation has at all times been approximately twenty cents per barrel, plus a gathering charge, which in many instances has been twelve and a half cents per barrel.

That said Pierce Oil Corporation transportes said oil for the plaintiff as a matter of accommodation and for the further reason that said Pierce Oil Corporation was interested in contracts for the purchase of large amounts of daily runs of Cushing crude with said Phoenix Refining Company, plaintiff herein; that plaintiff has never at any time had or owned any large or important production or wells producing oil in the Cushing field.

That said Phoenix Refining Company made a certain contract with the Tidal Oil Company for the purchase of its daily runs for a specified period of time, subject to termination upon thirty (30) days' notice by either party.

That the amount of oil contracted for by said Phoenix Refining Company was approximately three thousand (3,000) barrels daily, and that said Phoenix Refining Company in consideration of the Pierce Oil Corporation causing one-half of said Oil to be run through its line at said nominal cost of ten cents per barrel, assigned an undivided one-half interest in said contract to said Pierce Oil Corporation, and that said oil has been run under the terms of said contract, one-half to the Pierce Oil Corporation's refinery and one-half to the refinery of the Phoenix Refining Company at Sand Springs.

That sometime in the month of February, 1918, the Tidal Oil Company determined to terminate said contract and offered said oil to the highest bidder.

That both the Pierce Oil Corporation and the Phoenix Refining Company bid on said oil, and the bid of the Pierce Oil Corporation was higher than that of the Phoenix Refining Company, and thereupon said Tidal Oil Company sold said production in the Cushing field to said Pierce Oil Corporation, the daily runs thereof amounting to approximately three thousand (3,000) barrels daily.

That the Pierce Oil Corporation notified the Phoenix Refining Company that when its contract with the Tidal Oil Company became effective it would not longer have room in its line to transport oil for the Phoenix Refining Company; that said Company was aggrieved because the Pierce Oil Corporation declined to sell to it an undivided one-half interest in said contract with the Tidal Oil Company, and that for said reason the Phoenix Refining Company instituted this action.

That said contract with the Tidal Oil Company becomes effective on April 17, 1918.

IX.

The defendants further show that the capacity of the Pierce Oil Corporation's refinery at Sand Springs, Oklahoma, is in excess of ten thousand (10,000) barrels daily; that said refinery is being operated

at full capacity and with the highest degree of diligence in order that said company may fulfil contracts for refined products, and that said fullest operation and highest degree of diligence is necessary to enable said Pierce Oil Corporation to fulfil said contractual obligations.

X.

30 That the daily average amount of oil transported through said pipe line for the past two years is seventy-five hundred (7,500) barrels; that while said pipe line has nominally a greater capacity than said amount, experience and practice demonstrate that the actual capacity thereof is approximately said amount; that said amount is insufficient to supply the refinery needs of the Pierce Oil Corporation's refinery at Sand Springs, Oklahoma, and that the entire nominal capacity of said pipe line is insufficient to supply said needs.

That said Pierce Oil Corporation has heretofore received large amounts of crude from the Sinclair Oil & Gas Company, produced from the wells of said company located near Hominy, Oklahoma; that said oil was transported to the refinery of said Pierce Oil Corporation through the pipe line of the Texas Company; that the amount of oil so received has averaged fifteen hundred (1,500) barrels daily; that said Sinclair Oil & Gas Company has terminated its contract with the Pierce Oil Corporation.

That by reason of the loss of the use of said transportation facilities outside of and in addition to its pipe line, said Pierce Oil Corporation will necessarily be required to rely exclusively on its own pipe line facilities to supply its refinery needs, and will necessarily transport oil sufficient to meet said refinery requirements from its storage oil located in the Cushing field.

XI.

Defendants further show that the Phoenix Refining Company through its subsidiary company, the March Oil Company, owns a three-inch oil pipe line, extending from the refinery of said Phoenix refinery Company at Sand Springs, Oklahoma, to a point in Creek County, Oklahoma; that said three-inch line is not far distant from the common carrier line of the Texas Company running from Cushing to Tulsa and crosses the line of Cosden & Company running from Cushing to Tulsa.

31 That said Phoenix Refining Company can make connections with either of said lines and secure transportation of oil from the Cushing field to said *means*.

XII.

Defendants further show that the pipe lines which serve the Cushing field have heretofore transported the oil produced when the production of said field was approximately two hundred thousand

(200,000) barrels daily; that the production of said Cushing field has declined to approximately forty-five thousand (45,000) barrels; that said oil sells at a high premium and it is exceedingly difficult to obtain the same; that the public has no interest in the transportation of oil through the line of the defendant, Pierce Oil Corporation, referred to in plaintiff's petition, and that the conduct of the business of the same is not of consequence to the public.

XIII.

Defendants further show that said line is merely a refinery line and has been at all times such refinery line; that the distinction between common carrier lines and refinery lines is well understood in the oil business and is well understood by the Corporation Commission, its officers and agents; that said Commission has heretofore declared that the line in question is not a common carrier line and the same is exempt from the provisions of Article 2 of Chapter 53 of the Revised Laws of 1910.

XIV.

Defendant further shows that many refinery lines at times transport oil as a matter of accommodation for other refiners and are not by reason thereof common carrier lines.

XV.

Defendants further show that the Pierce Oil Corporation
32 is and has been at all times mentioned in plaintiff's complaint the owner of said pipe line; that the Corporation Commission has heretofore declared that the public needs no use in said pipe line and that the conduct of the same is not a matter of public consequence, and has declared the same exempt from the duties of a common carrier.

XVI.

Defendants further show that said Pierce Oil Corporation or said Clay Arthur Pierce have not at any time in any matter relative to said line been engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise by said line within this state.

XVII.

Defendants further show that the capacity of the Sand Springs refinery requires the exclusive use of said pipe line by the owner thereof, the Pierce Oil Corporation.

XVIII.

Defendan's further show that said Pierce Oil Corporation is a corporation organized under the laws of the State of Virginia, and that Clay Arthur Pierce is a resident and citizen of the State of New York; that said Pierce Oil Corporation has invested in said refinery approximately \$— and has invested in said pipe line approximately \$—; that said Pierce Oil Corporation has made purchases of Cushing crude oil to an amount of many hundreds of thousands of dollars in reliance on the use of said pipe line for transportation of same to its refinery at Sand Springs, Oklahoma; that in the event an order of this Honorable Commission is made requiring the defendants to furnish the use of said pipe line to other persons, and in particular to a competing refining company, the plaintiff in this action, the property of said Pierce Oil — will be taken within the meaning of the 5th Article of the Amendments to the Constitution of the United States and within the meaning of the 14th Article of the Amendments to the Constitution of the United States, and the defendants will be irreparably damaged.

XIX.

Defendants further show that such an order would constitute an abridgment of their privileges and immunities as citizens of the United States, would constitute a deprivation of liberty and property without due process of law and would deny to defendants the equal protection of the laws of the State of Oklahoma.

XX.

Defendants further show that such an order would be a violation of the provisions of the Constitution of the State of Oklahoma and of the Statutes of said State.

XXI.

Defendants further show that this Honorable Commission has no jurisdiction of the subject matter of this action or of the persons of the defendants, and that no order should be made in the premises other than an order dismissing plaintiff's complaint.

BOYLE & PRIEST,
GEO. T. PRIEST,
RICE & LYONS,
*Attorneys for Defendants,
Pierce Oil Corporation and
Clay Arthur Pierce.*

Filed Mark: Filed 3-10-18.

34 And thereafterwards on the 10th day of April, 1918, said cause came duly on for hearing before said Corporation Commission of Oklahoma, and the following proceedings were had:

35 Before the Corporation Commission of the State of Oklahoma.

No. 3278.

PHOENIX REFINING COMPANY, a Corporation, Complain-t,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Appearances:

C. B. Stewart and M. K. Cruce, for plaintiffs.

Boyle & Priest, by Mr. Priest, and Rice & Lyons, for Defendants.

Paul A. Walker, for Commission.

Transcript of Proceedings Had Before Commissioners Love and Russel, at Oklahoma City, Oklahoma, on April 10th, 1918.

THOMAS B. MELTON, being duly sworn, testified as follows:

By C. B. Stuart:

Q. What is your name?

A. Thomas B. Melton.

Q. Where do you live?

A. At the city of Tulsa.

Q. How long have you lived there?

A. Over five years.

Objection entered by Mr. Lyons, to the introduction of evidence of this nature for the reason that the application does not state facts sufficient to constitute any cause of action.

Commissioner Love: Objection overruled.

Q. Do you have any connection with the Phoenix Refining Company?

A. Yes sir.

Q. What relation do you bear to them?

36 A. Manager and Secretary.

Q. Will you please state to the Commission whether or not the Phoenix Company has a refinery at Sand Springs?

A. It has.

Q. What is the capacity of that refinery at Sand Springs?

A. 4,000 barrels per day.

Q. When was that refinery built?

A. It started construction in 1912 and finished in the Fall of 1913 with an addition since that time.

Q. Do you know of a company known as the Pierce Oil Corporation?

A. Yes, sir.

Q. You will state to the Commission whether or not the Pierce Oil Corporation has a pipe line running from Sand Springs to the Cushing field.

A. No, I don't know whether the Pierce Corporation has a pipe line or not. There is one runs through the Pierce Corporation property that takes business in the name of Clay Arthur Pierce.

Q. Neither the Pierce Company or Corporation has one then?

A. I can't say.

Q. And that pipe line runs from Sand Springs to the Cushing field?

A. Yes, sir.

Q. Has that pipe line ever carried any oil from the Cushing field to your refinery?

A. It carried to connections to our refinery.

Q. About how long has it carried your oil?

Objection entered to going into detail on subject insufficient to prove anything relative to the case.

Commissioner Love: Objection Over-ruled.

A. Four years.

Q. State to the Commission whether you carried it free of charge or paid for it.

A. Paid for it.

37 Q. How much did you pay?

A. Ten cents, fifteen and twenty cents, and then I bought some oil that they delivered themselves.

Q. Do you know whether or not they carried oil for other people from Cushing to Sand Springs?

A. Yes, sir.

Q. And along that line?

A. Yes, sir.

Q. Do you know who they were?

A. The Constantine Refining Company.

Q. Did they carry for them for hire too?

A. I am not positive.

Q. Then they have carried for the Constantine Refining Company?

A. Yes, sir.

Q. Will you state to the Commission whether or not the Pierce Oil Company has refused to carry further oil for you?

A. They have.

Q. Have you asked them to carry any?

A. Yes, sir.

Q. And they refused?

A. Yes, sir.

Q. Do you know how long that line is from Sand Springs to Cushing, that is about how long?

A. I would say about 38 miles.

Q. Do you know any other pipe line about the same length in that country?

A. The Cosdon Company's line.

Q. From the Cushing field to Tulsa?

A. Yes, sir.

Q. What is the length of that line?

38 A. I w-uld say about the same. Am not absolutely sure as to the distance.

Q. Do you know what the Cosdon Company charges?

A. I think fifteen cents a barrel.

Mr. Lyons moved to strike answer as not being best evidence.

Commissioner Love: Objection over-ruled. If this is on file there is no use for the Commission to go over this again as to charges, except as offered evidence.

Q. Have you talked to Mr. Cosdon about it?

A. No, sir.

Q. Who did you find out from?

A. The Constantine Refining Company.

Q. What do the Constantine Refining Company pay?

A. Fifteen a barrel.

Q. To whom?

A. To Cosdon.

Mr. Lyons entered objection on the grounds of same being hearsay.

Commissioner Love: Over-ruled objection.

Q. How much fixed oil have you there now to offer?

A. At the present time I have about 30 barrels per day.

Q. Have you any contracts or agreements by which you can get a large amount?

A. I have it promised that I can get, yes, sir.

Objection entered by Mr. Lyons, as same being immaterial, incompetent and irrelevant, and contains no proof in this action.

Q. State to the Commission whether you expect to run the refinery to its greatest capacity if you can get the oil?

A. I certainly will.

Q. You built it for that purpose?

A. Yes, sir.

Q. Is there any other pipe line running from the Sand Springs refinery to the Cushing field, except this?

39 A. None that I know of.

Q. None that carries the Cushing oil?

A. None that I know of.

Q. Is there any other line from which you could get this oil transported which you spoke of, from the Cushing field to your refinery?

A. Not unless I would lay seven or eight miles of line myself.

Q. But none as it now stands?

A. No, sir.

Q. And you say they have absolutely refused to take the thirty barrels?

Mr. Lyons entered objection on the ground that this information is produced in the letter and contracts.

Q. You have personally asked for them to take your oil?

A. No, I don't think we have, any other than tendered it to them.

Q. And they refused to take any of it?

A. Yes sir.

Mr. Lyons: I object to this your Honorable Commission for the reason that the contract, the letter and exhibits give this information and these facts in writing.

Mr. Lyons:

Q. They are running that thirty barrels per day aren't they?

A. I could not exactly say Mr. Lyons.

Mr. C. B. Stuart:

Q. You know what is going on?

A. I do.

Q. If they were not running you would know it wouldn't you?

A. Yes, sir, I would.

Q. If you wanted to tell the Commission that the Pierce Oil Corporation is not running those thirty barrels, you may at this time.

A. I don't know for the simple reason that they do not run 30 bbls. every day, but wait until the tank is full, but I have not seen a run-ticket or tag from this thirty barrels of oil.

Q. So far as you know they have not stopped running?

40 A. Not so far as I know.

Q. Where is this thirty barrels near Cushing located?

A. It is on the River bed of the State Oil Company.

Q. The State Oil Company owns the lease?

A. Yes sir.

Q. It is operating and producing oil?

A. Yes sir.

Q. Does your Company own the State Oil Company?

A. No.

Q. It is the running of that oil that this controversy is over?

A. No sir.

Q. What other oil is tendered to them?

A. I have not tendered any other oil, but as long as I can get pipe line connection I can get oil in our refinery.

Q. What capacity has that refinery?

A. Thirty barrels.

Q. And should run that, you think it should?

A. Yes sir.

Q. Have the Pierce Oil Corporation a refinery at Sand Springs?

A. I have seen it.

Q. What is its capacity?

A. Do not know as I have not been on the ground.

Q. You know they built a pipe line to supply that refinery?

A. I presume that is what they built it for.

Q. If they built that line to supply their requirements, should they not use it for that purpose?

A. If it required its maximum capacity I would say yes.

Q. Do you say there is any other way that oil can be gotten from Sand Springs from the Cushing field, except over this Pierce pipe line?

41 A. Not direct.

Q. Then there are some indirect ways?

A. Yes sir. The Texas Co.

Q. The Texas Company has a common carrier line? From Cushing to Tulsa I mean?

A. I don't know.

Q. Hasn't the Texas Company two six inch lines? Would you say they do a common carrier business?

A. I don't know.

Q. Have not the Texas Company a line from the Osage-Hominy oil field that you could get your oil from now?

A. Yes sir.

Q. Do you know that the Pan-American have a line under construction?

A. I have read something in the papers about it.

Q. Have you talked to the officials about their line Mr. Melton?

A. I believe I have some six months or so ago.

Q. Did they tell you their pipe had a carrying capacity larger than the refinery requirements, and that they would be able to transport some outside oil?

A. I don't remember that.

Q. You know that is the fact?

A. No sir I do not.

Q. The Phoenix Refinery controls the March Oil Company?

A. It is under the same management I believe.

Q. The March Oil Company has a three inch line from over in Creek County to your refinery?

A. It has a two or three inch line.

Q. How long is that line?

A. I would say about ten miles.

Q. That line could make connection with the Texas-Cushing pipe line or the Cosdon-Cushing pipe line, couldn't it?

42 Q. You have not gone into this subject thoroughly as to how this oil can be transported?

A. I think I have followed it very closely.

Q. You say you can't make that connection with your own line?

A. I don't know whether they are willing.

Q. The Texas Company operates as a common carrier doesn't it?

A. I don't know.

Q. Do you know what the Texas Company charges?

A. I don't.

Q. Do you know what the common carriers' charges are?

A. I understand it is fifteen.

Q. What is the Pierce charging for this oil?

A. Ten.

Q. As long as they could accommodate you as another refinery they did it, when they had space in their pipe line?

A. I don't know whether that is the case or not.

Q. You never looked at it in that way, as between shipper and common carrier; just only running for another at a cheaper rate than a common charge?

A. We paid whatever they charged.

Q. You knew the charge was much less than others were carrying oil for?

A. Not until lately.

Q. You know it now?

A. I think I do.

Q. At the present you are receiving oil through your refinery from the Osage-Texas and Hominy line?

A. Yes sir.

Q. And you are also receiving some oil from the Pierce line?

A. I don't know whether or not the Pierce made delivery of their stuff.

Q. Didn't this controversy all arise over the fact that you and the Pierce Company both bid on a large amount of the daily runs of the Tidal Oil Company in the Cushing field and they overbid your bid?

A. No sir the controversy started when I received the letter that they would handle no more oil after March 20th.

43 Q. You know the reason they made that statement was because of this big contract with the Tidal Company?

A. I don't know. Didn't think they had the space.

Q. You didn't know whether they had space or not?

A. No sir.

Q. You didn't investigate it?

A. No sir.

Q. You do not think you and the Pierce Oil Corporation both bid on this big amount of daily runs that the Tidal had for sale in the Cushing field?

A. I bid on them.

Q. You knew they bid and overbid you?

A. I didn't know if they bid or overbid me.

Q. You know that they got the contract?

A. I don't know, but I didn't get the oil.

Q. You say you don't know that they got the contract?

A. I have not seen any contract.

Q. Is that the reason you don't know?

A. Yes sir.

Q. They overbid you and got the contract, they told you so,

A. Mr. Haynes (of Tidal) told me.

Q. He told you that?

A. He possibly did.

Q. So you did not know it?

A. No I don't.

Q. You think, however, if the Phoenix Refinery or any other refinery needs his pipe line space to keep his own refinery going, it is its first duty instead of transporting oil for other refineries?

A. If it requires the maximum capacity of that line, he should have it.

Q. At the time they run oil for you, did they run under a written contract?

A. Not all the time, no.

Q. Practically all of the time. And nearly all of those contracts are such that they had interest in the runs?

A. No sir.

Q. The last two?

A. Yes sir.

44 Q. The other two were not?

A. No sir.

Q. When were they?

A. The big contract in 1914 and 1915 and 1916, each time it was separate. The 1917 was the only one. That was made before they had written contract?

Q. Each contract was written contract to cover the price?

A. Yes sir.

Q. As a matter of fact, you know until recently and until practically the time they gave you this notice, the Pierce Oil Corporation was getting lots of the Sinclair oil through the Osage-Hominy oil line?

A. No sir.

Q. You don't know that?

A. No sir.

Q. If that is a fact, and they run one thousand barrels a day or so for the Sinclair they would have to transport that much more through that end of the line.

Q. If they had the oil to transport I suppose they would.

By C. B. Stuart:

Q. You have the last contract with you?

A. Yes sir.

Q. Are you a lawyer?

A. No, thank you.

Q. You express your opinion very clearly about what the law is. You told the Commission in your judgment that the Phoenix Company was a common carrier of oil, and if there was a half dozen refineries there they could take it for themselves if they wanted it.

Mr. Lyons entered objection for the reason it is incompetent, irrelevant and immaterial, and does not tend to present any evidence.

Q. How did you get the idea that they could carry their own supplies as against the public carriers.

Mr. Lyons entered the above objection.

Q. Did they carry this for accom-odation or hire?

A. They paid for it.

Q. Did they carry it for your accom-odation or for hire?

45 Mr. Lyons entered objection to this evidence and testimony.

Q. They carried it for other people across the pipe line?

A. Yes sir.

Q. This contract that you have entered into here, is this the last contract?

A. Yes sir.

By Mr. Lyons:

Q. They have said something about the Texas Company running oil from the Cushing field to Tulsa? Your Refinery is how far from Tulsa?

A. Seven or eight miles?

Q. They said something about connection with the Texas Company line, do you know how that line runs?

A. I don't know.

Q. Do you know there is a line if you have never been on the ground?

A. No sir, I have never been on the ground.

Q. Do you know, as a matter of fact, of any other pipe line that could carry your oil to this place where you now get it, except by the Pierce Corporation line; that is without making new connections?

A. No sir.

Q. With some other company Line?

A. No sir.

Mr. Lyons: This contract is offered as evidence, and will be marked "Complainant's Exhibit A." Seems to be a contract between Clay Arthur Pierce of St. Louis and the Phoenix Company, dated February 23th, 1917.

Q. According *this* this 1917 contract, did they carry your oil and did you pay according to it?

A. Yes sir.

Q. Do you remember how much this contract calls for, how many bbls.? 2,000 barrels per day?

A. Yes sir.

Q. This contract was made in 1917 and terminated this year?

A. No sir, the termination was January 1st, although they carried oil up until the date of that letter.

Mr. Lyons: Demurrer.

Comes now the de'endants with separate demurrer to the testimony introduced on behalf of the plaintiff, for the reason that the same

46 fails to prove any liability against the defendants or either of them; fails to prove any cause of action; fails to prove any facts which give the Commission jurisdiction, and also affirmatively shows that there is nothing before the Commission, as thirty barrels of oil offered are allowed to run, and in that it does not at all appear that they could not transport the same or dispose of same, without the use of the Pierce Oil Corporation pipe line.

It is further demurred that the facts proved by the plaintiff do not in any wise prove or tend to prove, that the defendant Company pipe line has been engaged in the business of transporting oil.

Commissioner Love: Same is over-ruled.

Exceptions by defendants.

Mr. Lyons: The Court will also take notice that under the statute and records of the Commission that this pipe line is not a common carrier.

Commissioner Love: All records of the Commission in handling a case of this kind are used in making the findings of the Commission.

Mr. RICE called to witness stand.

Examination.

By Mr. Lyons:

Q. State your name?

A. Benjamin F. Rice.

Q. What is your business?

A. I am a lawyer and also Manager of the Crude Department of the Pierce Oil Corporation.

Q. Are you familiar with this line in dispute?

A. Yes sir.

Q. You know it extends from Sand Springs to the Cushing field?

A. Yes sir.

Q. You know that the Pierce Oil Company built this line direct to its refinery about 1913?

A. Yes sir in 1913.

Q. Do you know what business they engaged in at that time?

A. They were engaged in refining crude oil.

Q. They operated a refinery, and of what capacity?

A. Yes sir, about 10,000 barrels a day.

Q. Do you know the cost to the company with reference to this pipe line?

A. Yes sir.

Q. Do you know whether or not this line was built for refinery purposes, or for engaging in the business of transporting Oil?

A. It was built wholly for refinery purposes.

47 Q. To supply the refinery needs?

A. Yes sir.

Q. Are you familiar with the amount delivered to the smaller lines?

A. To some extent yes.

Q. As a matter of fact it is well known in the oil business, that nearly every company puts pipe line of some kind in?

A. Yes sir.

Objection entered, and over-ruled.

Q. Do you know whether this Company has ever operated as a common carrier?

Objection entered.

A. It has not.

Q. Do you know about the line having transported some oil for the Phoenix Refinery?

A. Yes they have during the past three or four years.

Q. That was done under special contract? At that time?

A. Yes sir.

Q. Then at the time when they did this they didn't need the space for their own requirements?

A. Yes sir.

Q. Do you know about the controversy of running this thirty barrels for the Phoenix?

A. Yes sir.

Q. What was the conversation regarding this thirty barrels?

A. He said he had about thirty barrels which he wanted carried, and would it be convenient for us to carry it. That he hoped to connect their oil line in that vicinity, and I told him we would carry the thirty barrels, and if we could we would carry the other, but would talk it over later. And so far as I am aware the Pierce Corporation is now transporting that thirty barrels.

A. And still running?

A. Yes sir.

Q. And still charging him 10 cents a barrel?

A. Yes but I believe we proposed to charge twenty, which is more in keeping with what the various producers charge.

48 Q. Did you know the situation of the Pierce Oil Corporation as to the refinery needs?

A. It needs all the capacity of that line.

Q. Do you know whether they closed a contract with the Tidal Oil Company for a lot of Cushing oil recently?

A. Yes sir.

Q. Did the Phoenix Company bid on that oil?

A. Yes sir.

Q. That was oil that the Phoenix and Pierce both had been receiving?

A. Yes sir, I understand that is the oil covered by this contract.

Q. As a matter of fact that is where the controversy arose?

A. That is where the ill feeling, if any, arose.

Q. The Pierce Oil Corporation bid for this oil higher than the Phoenix, so the Tidal Company awarded the contract to the Pierce?

A. Yes sir, they need all the space of the line for the refinery. And the further reason is they want to run to full capacity.

Q. Are they *aboe* to run it full capacity without this line?

A. Not without extra expense. They would have to buy gasoline in the open market, and sell it and they would have to buy transportation.

Q. Does the Pierce Oil Corporation own some Cushing storage also?

A. Yes sir.

Q. Do you know about the Pierce Oil Corporation having a contract with the Sinclair for Osage-Hominy crude, which the Sinclair deliver through its own line?

A. Yes sir they had a contract with the Sinclair for some 2,500 or 3,000 barrels from Texas.

Q. That is the line Melton talked about when he said there was 1,000 he could get at?

A. Yes I think so.

A. And the Pierce Oil Corporation is not able to get oil through that line without contracts being cut off?

A. Yes sir.

Q. The Pierce has no connection with the Tidal?

A. No sir.

Q. Who are the Tidal Oil Company officers?

49 A. Frank Haskell and a Mr. Brown of New York I think is the executive.

Q. They are wholly a separate organization from the Pierce?

A. Yes sir.

Q. You do know that this Pierce line has never been ready, able or willing to carry oil for the public entirely on contract?

A. Never has such an idea as a common carrier, except to accommodate others in the vicinity.

Q. And that is the situation with them, and as they appear to other refineries?

A. Sure.

Q. Is it a common thing for a refinery to lay line of pipe if necessary to make connections with other lines?

A. It is done every day sir.

By C. B. Stuart:

Q. You are a lawyer or oil man?

A. I am an oil man among lawyers and a lawyer among oil men.

Q. You know all about this business then?

A. I know a good deal about it.

Q. You are the attorney for the Pierce over there?

A. Yes sir.

Q. Did you draw this contract in 1917?

A. It was drawn in our office.

Q. Did you O. K. it?

A. If he drew it I did not O. K. it.

Q. You are willing to stand for it?

A. Yes sir.

Q. In that contract you agreed to carry 2,000 barrels for these people?

A. I don't remember the contract, we agreed to carry about 2,000.

Q. And for how much? Or was it for accom-odation?

A. We agreed to carry it for ten cents.

Q. Where do you get accommodation, you agreed to carry 2,000 barrels at your own price, and it is just accommodation?

A. Yes sir.

Q. Where is the accommodation coming from?

A. We are carrying it for their benefit, they are neighbors and we had the capacity, and did it to accommodate them.

Q. Was that a neighborly matter too?

A. Yes sir.

Q. And you collected the money for it?

A. Yes sir. They paid up promptly always.

Q. They paid what you charged?

A. Yes sir that was agreed upon.

50 Q. You know that this Phoenix Company, which had this oil transported through your pipe line for five years, was relying upon you to transport that oil?

A. Not beyond the terms of that contract.

Q. You have made a contract from year to year; a new contract each year? That is with this Company?

A. We made a new contract each year.

Q. When did you first commence this? When the pipe line was first completed?

A. We did not need the capacity of the line to carry for ourselves.

Q. And you carried it for others?

A. I don't know about that? I would not know that.

Q. You fixed your own price?

A. No sir.

Q. Who fixed it?

A. It has been agreeable that it was a fair price.

Q. Don't you think you were getting compensation?

A. We paid the Texas Company to transport the Hominy-Osage about 25¢.

Q. That is more than anybody had paid?

A. No sir.

Q. They take it now for from fifteen to twenty cents, don't they?

A. I don't know. I don't think so.

Q. You offered to take this for twenty?

A. Yes sir just to accommodate them.

Q. You doubled that price for accommodation?

A. No sir not that, but everything is higher now.

Q. You first charged them ten cents and that for practically 4½ years?

A. That was some years ago.

Q. Then you set a 20 cent price that year and carried for commis-sion?

A. Yes sir, I told them I would accommodate them.

Q. Did you tell Mr. Melton you would carry this for a commission?

A. I didn't see him, I had a conversation with his principal.

Q. Not on this subject?

A. No sir.

Q. This contract that you made with them if you were carrying this for accommodation, why didn't you go ahead and do it as a neighborly accommodation instead of changing upon your price?

A. That was on account of the Phoenix, it wasn't anything to us, it was then.

51 Q. For the four years you carried it and made a contract up to '18?

A. No sir, we made a contract year by year; each year.

Q. You made the last one up to 1918?

A. Yes sir.

Q. Do you know this letter?

A. I know I have seen a copy of it.

Q. You know that signature?

A. Yes sir.

Q. M. J. Grogan, who is he?

A. He is the Superintendent, and over-sees everything there.

Q. In that letter I find—(Letter read by C. B. Stuart to Commission.) Have you read that?

A. I have seen the copy yes sir.

Q. If you were carrying it for accommodation, why did your Vice-President, notify Grogan that hereafter the price would be 20 cents?

A. I presume because the price of every thing since 1914 has doubled.

Q. But you assume this man was making his price at the advance price?

A. It was in more keeping with the present prices.

Mr. C. B. Stuart introduced to the Commission *about* mentioned letter, same being marked "Exhibit No. 2."

Q. You are authorized to speak for this Company?

A. To a certain extent. As far as my knowledge goes.

Q. If these people were to offer you 2,000 barrels now, would you take it?

A. No sir. No sir we could not take any.

Q. Would you take 500 barrels?

A. We might, if we could temporarily handle it, yes sir. But only temporarily.

Q. Then what do you mean by saying you would not take any?

A. We figured we could not take any if we needed the line.

Q. Then you expect us to accept your conclusion that you would not take any, as final, when you wrote the letter?

A. The demand has increased for finished products greatly and we might carry the 30 barrels a day, or possibly a little more, but not a large quantity.

Q. Would you carry 1,000 barrels?

A. I would not contract to carry any.

Q. In other words, you want the Commission to understand, that although you carried this oil for four years for hire, accepted the money for carrying it from the Cushing field, that hereafter you won't carry any oil for anybody unless you wish to?

52 A. I mean to say, from year to year we contracted with the various refineries and helped them as far as we could, but we now figure we have to use every available part of our line and can not carry for outsiders.

Q. No matter who offers it to you, if you did it at all it would be all for accommodation?

A. It would be purely for accommodation.

Q. You don't consider yourself under obligation to do these accommodations?

A. Not necessarily, but it has always been for accommodation.

Q. What is the capacity of your Pierce Refinery?

A. About 10,000 barrels daily.

Q. How much is it going now?

A. We figure about 10,000. I don't know exactly.

Q. How much are you running now?

A. Mr. Grogan can tell you exactly.

Q. Has he the figures with him?

A. I believe so.

Objection by Mr. Lyons on the grounds that Mr. Grogan was not asked to bring the books, and that the testimony is incompetent, immaterial and irrelevant.

Q. You know the capacity was increased in 1917?

A. Yes sir. I understand so.

Q. That is one reason why the space is needed?

A. Yes sir, that is a far greater movement of refined products.

Mr. Paul A. Walker, for the Commission:

Q. Is a 20 cent rate for transporting oil from Cushing to Sand Springs based on the cost of transporting oil or based upon what the pipe line usually charges?

A. I think it is more on customary charges, I don't know. I never had it up with the Texas Company, so I don't know how they figure it, but we pay them 20 or 25 cents.

Q. What does it cost actually, or what would it cost to transport oil from Cushing to Sand Springs through a line such as you have, if the line was carrying its maximum capacity?

A. I don't know that.

By C. B. Stuart:

Q. Do you know as a matter of fact, that 20 cents is about the maximum charge for such service by pipe line in that country?

A. It seems it is a plenty.

53 Q. And you were charging a plenty then?

A. I presume so.

Commissioner Love: If I get the contention it is that this pipe line has been used as a common carrier, and since it has been such you pick your customers.

A. No sir, only those few located at Sand Springs and possibly a few around the Mid-Continent at Tulsa, and we never have operated any other way, except to accommodate lines in the neighborhood. We never done any different by reason of the exemption of pipe line over there in the four or five years. But we have never been a public service company.

By C. B. Stuart:

Q. You went out and bought your right-of-way just like any other Company?

A. I suppose so.

Q. And you went through the streets of the town, like others do?

A. I don't think we went through any towns.

Q. You didn't go through any streets?

A. I think not.

Q. Not at Sand Springs?

A. I didn't see any, but I think the line lays on the river.

Q. Had it been necessary you could have condemned land to go through it?

A. I suppose so, but we do not frequently have this done.

By Mr. Lyons:

Q. The Phoenix Refining Company has a refinery under the opinion of the Attorney General, has a right of way over the highways.

A. I understand so.

Q. And they don't purport to be a common carrier?

A. No sir.

By C. B. Stuart:

Q. You don't mean as a lawyer that if a refining company runs a pipe line, and exercises the rights of a common carrier, carrying products of others, they are not a common carrier?

54 A. I think so, yes sir.

EDWARD R. ATWELL, JR., being duly sworn, testified as follows:

By Mr. Lyons:

Q. State your name.

A. Edward R. Atwell, Jr.

Q. Mr. Atwell what is your position with the Pierce Oil Corporation?

A. General Auditor and Assistant Secretary.

Q. Do you know about what their refinery at Sand Springs cost originally?

A. December 31st, the amount invested in excess of stocks was about two and a quarter millions, December 31st, 1917.

Q. The refinery was enlarged during 1917?

A. Yes sir.

Q. How much was the capacity enlarged during 1917?

A. About 2,000 barrels a day.

Q. Do you know about what the cost of the 1917 improvements were?

A. No, I could not tell you.

Q. Do you know what the investment in the pipe line was approximately?

A. About one hundred sixty thousand.

Q. That was 1913 or 1914?

A. The original costs were, but the improvements were made since that.

Q. When was that put in?

A. Some time in 1913.

Commissioner Love: When the application was filed with the Commission what was the purpose of the Company? In making this investment what business was he going into?

A. For the manufacture of oil, so as to be able to supply their own selling stations.

55 Q. They are largely engaged in selling oil?

A. Practically entirely.

Q. The pipe line was built to supply the refinery at Cushing?

A. Yes sir.

Q. That was the entire purpose?

A. Yes sir.

Q. Was the policy or intention of the Company at any time, to go in to the business of transporting oil from Cushing to Sand Springs?

A. Not that I know of.

Q. What do you mean, that was not its intention?

A. I never heard of it.

Q. Do you know whether the Company has any large outstanding contracts at this time for manufacturing productions of crude oil and selling arrangements to handle same?

A. They have, of course, contracts they are taking from time to time, but the most of the oil manufactured is sold through their own stations.

Q. I wish you would tell the Commission the effect on your business of not being able to run your Sand Springs refinery at its full capacity?

56 A. The result would be, we would be out of gasoline at a number of points, and be compelled to buy finished gasoline on the outside to sell to our trade.

Q. Could you buy finished gasoline at the cost of refining?

A. No sir, any gasoline we bought on the outside we would not any more than break even, and generally lose money.

Q. That would be a loss then?

A. Yes sir.

Q. Do you know what the capacity of the refinery is?

A. About 11,000 barrels a day.

Q. Do you know the capacity of the pipe line?

A. About 10,000 a day.

Q. Do you know whether it is possible to run both at full capacity all the time?

A. They have not been able to run either of them at full capacity for the last four months that I know of.

Q. Is that so, and what is the reason for that?

A. The reason was we were unable to operate the pipe line, as I understand. In most of the cold weather you can't transport as much oil as in the warm weather; the oil congeals and is harder to transport.

Q. Are you able to operate the refinery at full capacity now?

A. No sir, not now.

Q. Why not?

A. We have not enough crude oil to operate it to its utmost capacity.

Q. The refinery requires all you can transport over the pipe line?

A. It has been consuming more than that for the last four months.

Q. What would be the effect upon the refinery if 1,000 barrels of the space of the pipeline were devoted to other people's use at the present time?

A. We would, taking an average run, put through the refinery, such amount as would consume the stocks we have on hand at Sand Springs at about 12,000 barrels a day in excess of what we transport through the pipe line.

57 Q. Just how would that effect the profits?

A. It would cut down the profits because after exhausting the supply, and without that surplus supply, of crude, we would have to cut down at the refinery.

Q. I understand the capacity has been increased 2,000 barrels in the last year?

A. Yes sir.

Q. Are you familiar with the conditions in the Cushing field now as to scarcity or plentifulness of crude, and with seeming conditions in the past years?

A. Only from hearsay.

Q. You do though, that when the Cushing field was providing a tremendous quantity of oil, it was plentiful?

A. Yes sir.

Q. Do you know that Cushing crude is known as high?

A. Yes sir.

Q. You know inasmuch as it is hard to get and it is valuable for refinery purposes, the Pierce Corporation wanted to depend upon its own line to Cushing?

A. Yes sir.

Q. That is the situation at this time?

A. Yes sir.

By C. B. Stuart:

Q. What position do you hold?

A. General Auditor and Assistant Secretary.

Q. The Pierce Oil Corporation has sold about as much gasoline in 1915 as they do now?

A. I can not say just positive as to that.

Q. What is the difference in volume out of your refinery at Sand Springs?

A. I don't know what they were producing in 1915. I can't answer that.

58 Q. Were you Auditor then?

A. No sir.

Q. How long have you been Auditor?

A. About eleven months.

Q. Were they using as much oil last year as this?

A. No sir.

Q. Why not?

A. Because they are running more oil?

Q. Why did you not run that last year?

A. We didn't have as much capacity.

Q. How much capacity did you have last year?

A. About 9,000 barrels a day.

Q. Was oil scarcer last year than this, or more plentiful?

A. I can't answer that question except from hearsay. I understand it was more plentiful.

Q. You could get it just as well as now?

A. I don't know whether we could get it or not.

Q. Did you have any difficulty about it?

A. Yes sir we had considerable.

Q. Any more than this year; it was more plentiful, wasn't it?

A. I don't answer because that is beyond my time and I don't know whether it was more plentiful or not.

Q. You agreed to carry 2,000 barrels for these people?

A. I hear that in that contract, but I don't know personally.

Q. Why could you carry 2,000 barrels last year and it was plentiful and can't carry it this year when it is more scarce?

A. If oil was more plentiful they might have obtained it from some other source.

Mr. Lyons entered objection on the ground that he testified as to the capacity then, and as to its capacity now and as to having difficulty in getting oil.

59 Q. Tell me, if you could get plenty of oil last year, if you built that thing to run to its full capacity and wanted to get out all the stuff you could get out, why did you agree to carry 2,000 barrels this year?

Mr. Lyons entered objection made as witness doesn't know as to the things and contracts of last year or previous year, and the contracts show it was entered into to secure one-half of the products.

A. I can't answer because it does not come within my end of the business.

Q. How many barrels do you get through that refinery?

A. I don't say, the books are not here.

Q. Why didn't you bring them?

Mr Lyons objection, stating he would have brought the books had he been requested to do so. They were not asked for.

Q. You state you were running to your full capacity?

A. I didn't state that. I said that we were running on an average of about 6,800 barrels a day.

Q. How much of the capacity is that?

A. The capacity is 11,000.

Interrogatories by Mr. Lyons:

Q. Ten thousand barrels is the capacity of the pipe line?

A. Yes sir.

Q. The pipe line runs about 6,600 a day?

A. Yes on an average of four months.

By C. B. Stuart:

Q. You run all the oil you could get in your refinery?

A. All we can get.

Q. And you run 6,800 barrels a day?

A. No we put that through the refinery.

Q. How much oil have you stored away?

A. I don't know.

Q. You don't know about it at all?

A. No sir.

Q. Do your books show?

60 A. Yes sir.

Q. Have you any idea as the Auditor?

A. I have not the slightest idea.

Q. Well, have they any stored in Sand Springs?

A. Yes they have some, but I don't know how much.

Q. You know they have run through the refinery 6,800 and take all you can get and have a capacity of 11,000?

A. Yes sir.

Q. Now you knew that these people had agreed to pay ten cents for the last four years?

A. I don't know about it for four years; that was before I came with the Company.

Q. You know your people have raised their price to about twenty cents?

A. Yes sir.

Q. Why did they raise it?

A. I was not asked and don't know anything about it.

Q. Who raised it?

Objection entered by Mr. Lyons on the grounds that it is shown in the letter which is offered as evidence.

Q. I understand they operated this refinery to put the greatest amount of oil possible through it for the last four months?

A. Yes sir.

Q. And with this operation they have been able to handle only 6,800 barrels daily?

A. That is not the greatest amount that could be put through; they could put through 11,000 if they get the oil to put through, but they have not been able to get the oil.

Q. It has not been on account of the use of the pipe line, it is because they have not the oil?

A. Yes sir.

Q. They have operated the pipe line to put all through it would carry?

A. I don't know whether they have or not.

61 Q. The average shows it about 6,600 barrels?

A. Yes sir.

Q. One thousand has been going to the Phoenix Refinery?

A. Yes sir.

Mr. M. J. GORGAN, being duly sworn, testified as follows:

By Mr. Lyons:

Q. State your name.

A. M. J. Grogan.

Q. What is your occupation?

A. Superintendent of the pipe line property of the Pierce Refining Co.

Q. How long have you had that position?

A. Two years the first of May.

Q. You are operating a pipe line now?

A. Yes sir.

Q. How much oil is run on an average of the last four or five months?

A. It has been about 6,000 or 6,500 barrels.

Q. Is that an accurate average?

A. I can't say as to that.

Q. Could you put more oil through that pipe line?

A. Yes sir. The last month we have run about 9,200 to 9,500.

Q. Where does that go to?

A. The Sand Springs refinery.

Q. Are you using all the space in that pipe line for the Sand Springs refinery?

A. Practically so, yes sir.

Q. Are you familiar with the pipe line situation of the Cushing field?

A. To some extent.

Q. How many pipe lines are there now, taking oil out of the Cushing field?

A. I presume ten or twelve.

Q. Name them.

62 A. Sinclair-Cudahy.

Q. Do you know their capacity?

A. It must be in the neighborhood of an 8-inch line.

Q. What is the next one?

A. The Oklahoma Pipe Line Company, also have 8" line. The Prairie Oil & Gas Company have an 8" and possibly two. The Texas Company—am not sure whether it is two 6" lines or one. The Empire have a line.

Q. What is it?

A. It is an 8" line to Cushing and 6" from the Drumright filed to that point in Cushing.

The Sapula Refining Company have a 4" line.

The Cosdon Pipe Line Company have a 6" line, and maybe double.

The Southern have a 4" line I understand.

Q. What lines run from Sand Springs to Tulsa?

A. The Pierce Oil Corporation has one from Cushing to Tulsa.

Q. The Texas Company have a line from Osage-Hominy to Tulsa hasn't it?

A. Yes sir.

Q. How close does that go to where the Phoenix has their refinery?

A. Just to the Southwest side of their property line.

Q. Close to the Phoenix Oil Refinery also?

A. Yes sir.

Q. Do you know whether the Pan-American is constructing a line?

A. I understand they are.

Q. At first the Phoenix were receiving over the Sinclair through the line of the Texas Company from the Osage-Hominy fields, approximately 2,500 barrels daily?

A. Yes sir.

Q. But no longer receive over that line?

63

A. Yes sir.

Q. Tell us about conditions of the pipe line during this winter?

A. The operating line is always worse in the winter than the summer on account of the weather conditions. The oil congeals and it makes it harder to transport and you can't transport as much.

Q. Did you put all the oil you could get through the pipe line?

A. Yes sir.

Q. The Pierce Corporation had the oil?

A. Then the reason you did not operate to a greater capacity was because you could not put more oil through the pipe line?

A. Yes sir.

Q. And then you were getting outside oil?

A. Yes sir.

By C. B. Stuart:

Q. Where is the refinery of the Texas Company, near Tulsa?

A. Yes sir.

Q. What is its capacity?

A. From the looks I think about 10,000 barrels.

Q. About the size of yours?

A. Something like that.

Q. The Texas Company carries oil over its line to that refinery?

A. I presume so.

Q. And also carried oil for other people?

A. Possibly so.

Q. So there is a Company there who has a refinery that carries oil from the Cushing field to its refinery and also carries oil of other people?

A. Yes sir.

Q. What other company is there besides the Texas Company?

A. I don't know. There are other Companys who have refineries and also pipe lines, but whether they carry oil for other people or not I do not know.

64 Q. What other companies have refineries that have pipe lines too?

— — — — —
Q. From what points to what points?

A. From the refinery at Tulsa to the Yale field I understand.

Q. How close is the proposed route of this line to the Phoenix Company's refinery?

A. Across the river I think, within one and one-half miles possibly or a mile.

Q. Do you know where the March Oil Company line is, or about where it runs?

A. From the Phoenix Refining Company to a point Southeast of their to the Tanaha Field, a distance of seven miles.

Q. A three inch line?

A. Yes sir.

Q. What is the capacity of the 3" line compared with that of the 6"?

A. About one-fourth.

Q. This line of the March Oil Company, which the Phoenix uses, does it run close to the Texas Company line from Sand Springs to Tulsa?

A. The Texas Company line goes near the Tanaha field and the Phoenix goes there also and I imagine they are very close.

Q. Is there anything for a refinery to lay a three or six inch pipe to make connection?

A. All of them do.

Q. Right along?

A. Yes sir.

Q. The Phoenix could make connection with other companies, for instance the Texas and get a connection?

A. Yes sir.

Q. They could make that with the March Company line?

A. Yes sir.

Q. At the present time they are receiving oil from the Osage-Hominy lines through the Texas Pipe Line Company?

A. Yes.

Q. Have the Pierce Oil Corporation received oil through their line recently?

65 A. Yes sir.

Q. The Sinclair terminated a contract with the Pierce Oil failed to make delivery?

A. Yes sir.

Q. Did you know what the deliveries were daily?

A. From 1,000 to 2,500 barrels.

Q. You say you did get at one time 9,500 barrels through there but the average is about 6,500?

A. Something like that.

Q. Do you know how much oil is stored in Sand Springs with the Pierce Corporation?

A. About 100,000 barrels.

Q. Do you know where they got that from, most of it?

A. From the Cushing field.

Q. When did they get that, how long have they had it?

A. They have accumulated that much stock within the last year I should say.

Q. Have they had on an average of 100,000 barrels in storage in the last year.

Q. Yes sir.

Q. That is the average in storage during the last year?

A. I couldn't say.

Q. Have you any idea?

A. No, I wouldn't want to make a statement, I didn't know.

By Mr. Lyons:

Q. The Texas Company has two six inch lines hasn't it?

A. I understand they have, I don't know positive.

J. K. McGOLDRICK, being duly sworn, testified as follows:

By Mr. Lyons:

Q. State your name.

A. J. K. McGoldrick.

Q. You are the pipe line Superintendent of the Texas Company?

A. Yes sir.

66 Q. How many lines has the Texas Company from Cushing to Tulsa?

A. Two 6" lines.

Q. Operating under common carriers?

A. Yes, sir.

Q. What is your charge for transporting oil about 35 miles?

A. Twenty cents from Cushing to Tulsa and 1 per cent for war tax.

Q. It is about the same distance from Cushing to Tulsa as from Cushing to Sand Springs?

A. I should judge about the same distance.

Q. How long has your charge been thirty cents a barrel?

A. To my knowledge since last July.

A. The Cosdon have a pipe line.

Cross-examination.

By Judge Stuart:

Q. Do the Cosdon carry oil for other people over its line?

A. I presume so.

Q. And it is carrying stuff to its own refinery?

A. Yes.

Q. This proposed pipe line you spoke of, whose is that that runs along the river?

A. The Pan-American.

Q. Is it built yet?

Q. I understand it is under construction.

Q. You are figuring that the Phoenix can connect with a line that isn't built yet?

A. After it is built.

Q. What do you figure on doing until that line is build, sit still?

A. No, they have a connection with other pipe lines.

Q. The oil that the Pierce Corporation carries for the Phoenix from the Cushing field to the Phoenix refinery is delivered about a quarter of a mile from the Phoenix refinery?

A. Our line runs about that distance.

Q. And you deliver it in tanks at the refinery?

67 A. Yes, sir.

Q. And the nearest one you can think of is that proposed line?

A. No, sir.

Q. What is the other?

A. The Texas Company.

Q. How far is that?

A. About the same distance as our own.

Q. What oil is that line carrying?

A. It carries oil similar to that of Cushing.

Q. Do you say that the Cushing oil could be put through the Texas line from the Cushing field to Sand Springs?

A. Yes, sir.

Q. Is it being done?

Q. I don't know that it is.

Q. Don't you know that no Cushing oil is being put through the Texas line from Cushing?

A. I don't say it is, it could be.

Q. You didn't say it is.

A. No sir.

Q. You don't know what it was before that?

A. No sir.

Q. Do you know where the March Oil Company's 3" line is?

A. There was a 3" line running from their property at Oilton down near the Pierce Oil Company station.

Q. The March Oil Company line I mean, from Creek County over to the Phoenix?

A. I don't know where that line is.

Q. The Texas Company also has a line from Tulsa to the Osage Hominy?

A. Yes sir.

Q. You are delivering oil to the Phoenix refinery now?

68 A. I think so.

Q. What is the capacity of your line?

A. About 10,500 barrels a day.

Q. Do any of the refineries over there have to buy oil in the Cushing field?

A. The Cosdon refinery; the Roxona Company; the Texas Company, Cushing Refining Co., the Southern Oil Corporation, Sapulpa, and there is some small refineries have their line from Cushing to Yale.

Q. Is the Cosdon a common carrier line?

A. I don't know.

Objection entered.

Q. You don't know of any other that is?

A. No, sir.

Redirect.

By Mr. Lyons:

Q. Do you know that certain of the refineries who have their own pipe lines to the Cushing field, carry oil at times as accommodation for other refineries?

A. Yes, I think they do. I know we have carried oil for accommodation for Cosdon and other refineries.

Q. When did you become a common carrier?

A. I think as far as I know, July 1st, 1917.

Q. That is the Texas Pipe Line Co. or the Texas Company? That were a common carrier before that?

A. The Texas Company.

Q. You don't know about the Sapulpa or Southern, whether they run their own oil and some for others as accommodation?

A. As far as I know it is just their own oil.

Q. It is customary for a refinery to make its own connection with the pipe line at the delivery point?

A. As a general rule it is but not all the time; if they have the money the common carriers lay the line and run the line to their banks.

A. And charges the labor and all to them?

69 A. Yes sir.

By C. B. Stuart:

Q. Do you work for the Texas Pipe Line Company or the Texas Company?

A. The Texas Pipe Line Company.

Q. What relation does one bear to the other?

A. No relation at all. They are just a common carrier pipe line company.

Q. The Texas had a pipe line?

A. Yes sir.

Q. Do the Texas Company carry other people's oil besides its own through this line and charge them for it?

A. Yes, sir.

Q. And charge what it was worth to carry it, and you are doing that same thing today?

A. Yes sir.

Q. You are charging how much?

A. I don't know, but I think 20 cents a barrel.

Q. And you *and* charging what you think it is worth?

A. I don't know what it costs to operate the line.

Q. The Texas Company have a refinery?

A. Yes sir.

Q. At West Tulsa?

A. Yes sir.

Q. As a matter of fact, when you carried it, at the time you accepted money for carrying it for other people, you were carrying for your own refinery? And you are doing it today?

A. Yes sir.

Q. You spoke about the custom of others carrying it for others for accommodation; what about that?

A. I don't know about the accommodation, but as a favor one would help out another.

Q. Is that what you mean?

A. Just the same.

70 Q. Do you know any Company which we will say has a capacity of ten or eleven hundred barrels in its refinery and has about the same pipe line capacity, when it can fill its line, that accommodated the people and charges for it over there?

A. I know the Texas Company will take any bodie's oil who pays for it.

By Mr. Lyons:

Q. You mean the Texas Company or the Pipe line Company?

A. Yes, the Pipe Line Company.

Q. The Texas Company carried it as accommodation?

A. Yes, and got it as paid business too.

Q. As long as the refinery needed it you didn't carry for others?

A. Not to my knowledge.

Q. You carry for every body? And the name of this Company doing that is the Texas Pipe Line Company and it is in the business of transporting oil to refineries?

A. Yes sir.

Q. The Texas Company is still a refinery?

A. Yes sir.

By C. B. Stuart:

Q. Do you deliver any oil from Hominy to the Phoenix Refining Co.?

A. I think we are delivering the 1,000 barrels a day.

Q. Do you put Cushing oil through that line?

A. No sir.

Q. But you can do it?

A. Yes sir.

Q. But you never have?

A. No sir.

Q. You have made a change,—a big change?

A. Yes sir.

Q. So it is not practicable now to carry Cushing oil at this time?

71 A. We can do it but not at this time.

Q. You know you would have to make a change to do it?

A. Yes, we would have to open a couple of gates and put in a little switch.

Q. You never have carried it then?

A. No sir.

Q. You told me when the Texas Company owned its line, before the Texas Pipe Line Company took it over, that the Texas Company carried other people's oil?

A. Yes sir.

Q. And it carried any bodie's oil who paid for it?

A. Yes sir, I suppose they did.

By Mr. Lyons:

Q. They didn't take any bodie's oil when they needed the pipe line for their own purpose?

A. I don't know as to that, we have always had greater Pipe Line capacity than refining capacity.

Mr. Lyons introduces as evidence, Agreement dated May 29th, 1917, as evidence, same being marked "Exhibit No. 3."

Mr. RICE recalled to stand.

By C. B. Stuart:

Q. Were these contracts executed in your office?

A. No sir, I assume not. This was executed in Tulsa and I don't know that Mr. Duffy was there.

Q. That is his signature?

A. Yes sir.

Objection entered by Mr. Lyons.

Q. Has the Pierce Company, the defendants in this case, has it any producing capacity in Oklahoma?

A. Yes has a small amount.

72 Q. Where?

A. About 140 barrels in Cushing and some around Okmulgee.

Q. You get that 140 barrels in Cushing over this line?

A. I think so.

Q. And the rest of it you buy?

A. Yes sir.

Q. You have a title to it at the time you run it through your refinery?

A. Yes sir.

Q. You get the title before you run it through the pipe line?

A. Yes sir.

By Mr. Lyons:

Q. Same is daily run?

A. Yes sir.

Q. Doesn't that refer to the 140 barrels in Cushing, and the rest you get you buy and pay for?

A. Yes sir.

By Mr. Lyons:

Q. The daily runs you contracted for are not all paid for as runs?

A. Yes, the 10th and 25th of each month we pay for daily runs.

Q. As a matter of fact the Phoenix have a contract with the March Oil Company for 3,000 barrels of daily runs. That is paid for as runs but the terms of the contract is for six months?

A. Yes I think so.

By C. B. Stuart:

Q. The Tidal is the only one you have at this time?

A. We have three or four.

Q. From the Cushing field?

A. Yes sir.

Q. All of those other contracts from the different other people for this stuff, you pay for as you get it?

73 A. We pay tank oil in cash and the oil we run on daily runs we pay for on the 10th and 25th of each month, following delivery.

Q. All the oil that you get actually, you pay cash for at the time you get it?

A. Yes in fact.

By Mr. Lyons: The order of exemption of the Pierce Oil Corporation and appearance heretofore made by the Commission, is in evidence.

Commissioner Love: Mr. Lyons you wish a copy of the tran-

script and Mr. Stuart you also wish one. Complainants will be given 20 days in which to file brief, after transcript is out. Defendants ten days to file reply brief and complainants five days in which to reply thereto.

C. B. Stuart: Further evidence to be included by defendants same being, Agreement dated February 23rd, 1918, marked "Exhibit No. 4." Also agreement dated January 20th, 1918, marked "Exhibit No. 5."

(Testimony concluded.)

74 The exhibits referred to and mentioned in said testimony were in words and figures as follows:

75

Agreement.

This agreement, made this 26th day of February, A. D. 1917, by and between Clay Arthur Pierce, of St. Louis, Missouri, party of the first part, and the Phoenix Refining Company, a Corporation organized under the laws of the State of Oklahoma, of the second part, witnesseth:

Whereas, the party of the first part is operating in Oklahoma an oil pipe line from what is termed the "Cushing Field" in Creek County, Oklahoma, to a point in the vicinity of Sand Springs, Oklahoma; and

Whereas, the capacity and location of said pipe line is known to second party; and

Whereas, second party is engaged in the operation of an oil refinery in the vicinity of Sand Springs, Oklahoma, and uses, in its business, oil produced in the Cushing Field.

Now, for the consideration herein appearing, and a valuable consideration passing between the parties, it is agreed:

First.

The first party will, on request, and at the time and in the quantities designated by the second party, subject to the provisions hereof, transport crude oil, the property of the second party, from points in said Cushing Field designated by the second party, within a reddus of ten thousand (10,000) feet from the pumping station of the first party's said pipe line, known as the "Tiger Pumping Station," and located in said Cushing Field, through said pipe line, and deliver the same into the tanks of second party at its refinery at Sand Springs, Oklahoma.

Second.

76 For the services of first party in the transporting of said oil, and the services incident thereto, in addition to the covenants hereof, the party of the second part agrees to pay to the party of the first part, at the times herein set forth, the sum of ten

cents (10¢) per barrel of crude oil, for each and every barrel of forty-two (42) gallons each transported by first party through his said oil pipe line from said Cushing Field to the said tanks of said second party located as aforesaid.

It is covenanted:

(a) Except as herein provided, this contract shall be in force and effect from date of its execution to the first day of January, 1918.

(b) During the term of this contract, second party agrees to offer for transportation through the pipe line of first party, under the terms hereof, all crude oil, from the Cushing Field, used by it in its refinery to the amount of two thousand (2,000) barrels per day, and the first party agrees to accept and transport the same under the terms hereof.

(c) First party will accept for transportation hereunder merchantable Cushing Crude oil of not less than 38 degrees gravity subject to the following deductions:

First. The customary three per cent (3%) deduction from tank strap gauge of oil from all wooden tannage.

Second. No deduction shall be made from the tank strap gauge of merchantable Cushing Crude contained in steel storage, but a deduction of one-half per cent ($\frac{1}{2}\%$) shall be made from said oil for shrinkage in transportation. Provided that said deduction of one-half per cent ($\frac{1}{2}\%$) shall not apply to fresh run merchantable Cushing Crude on which an allowance of three per cent (3%) deduction has been made to first party by the producer.

The gaugers of first party will pass on quality and kind of oil to be transported, first party to be at no expense in taking of said oil other than for gathering lines, connections and the services of its gaugers.

77 Second party shall be entitled to a deduction for all BS and W in excess of one per cent (1%) on oil delivered at second party's tanks.

(d) First party will install and maintain adequate pipe line facilities and connections for the gathering of the oil in the Cushing Field, within the radius aforesaid, at his own expense, provided, that if in any gathering line of one mile or more in length, second party does not deliver to first party for transportation one hundred thousand (100,000) barrels of oil, second party shall thereupon become indebted to first party in an amount equal to the cost of installing said gathering lines, less the cost of the materials in said line; provided, that the pipe line of the second party now laid to tanks of second party from the six inch line of the first party in the vicinity of Sand Springs, Oklahoma, shall be used for the transportation of oil hereunder without expense to first party, and the said line shall be maintained in a proper condition at the expense of the second party.

(e) Settlements for oil transported shall be made between the parties on the seventh (7th), Fourteenth (14th), twenty-first (21st), and the last days of each month, and payment of each settlement shall be made by second party on the succeeding seventh (7th) day.

(f) This agreement may be terminated by the first party for failure of the second party to make payments in money as herein provided and may be terminated by second party on account of failure of first party to make prompt delivery of the oil to be transported by it hereunder, and also may be terminated by either party where the performance of the agreement is prevented by the act of God or causes beyond the control of the parties, provided, however, that either party desiring to termination this agreement for the causes mentioned, shall give notice in writing to the other party of his or its intention so to do, and the agreement shall remain in force until such notice is given.

78 (g) This agreement is subject to the rules and regulations of the Corporation Commission and the laws of the State of Oklahoma; it being understood that in the event this contract conflicts with any order of the Corporation Commission of the State of Oklahoma, or with any law of the State of Oklahoma, that the first party is under no obligation to test the validity of the same, but may, at his option, proceed in accordance with said law or order.

(h) Second party warrants that it is, or will be, the owner of all crude oil which it may request first party to transport for it, and will hold first party free and harmless on account of any claim or claims of adverse interests therein, and upon such adverse claim being made, will furnish first party indemnity satisfactory to him.

(i) Tender by first party to the tankage of second party of crude oil transported under the terms hereof, shall be deemed a compliance by the first party with the obligations here undertaken, and thereupon second party shall be liable to first party for the cost of transportation as herein appears.

Third.

It is further agreed between the parties, as follows:

(1) The first party will, at the request of the second party, accept and transport crude oil contained in steel storage, for the second party under this agreement, which is located at any point in said "Cushing Field" beyond ten thousand (10,000) feet from said "Tiger Pumping Station"; on condition, however, that the Second party shall, in that event be responsible for and pay all losses resulting from breaks in the pipe lines or from any other cause occurring beyond said 10,000 feet limit.

(2) In the event of any losses occurring as aforesaid, the same are to be amicably determined and agreed to, on reports made and duly verified by the affidavits of the representatives of the first and second

79 parties respectively. Such reports are to be full and final, and the basis by which all such losses are to be charged against the second party.

(3) That the first party will employ, at the expense of the second party, a line walker, who shall make a daily report regarding the condition of the pipe line to the first party, and a carbon copy thereof be furnished to the second party.

In witness whereof, the parties hereto have executed this agreement, in duplicate, the day and year first above written.

CLAY ARTHUR PIERCE,

First Party.

PHOENIX REFINING COMPANY,

A CORPORATION,

By JAS. KING DUFFY,

President,

Second Party.

Attest:

THOS. P. MELVIN,

Secretary.

Approved as to form:

S. D. JOHNSON,

General Attorney.

Exhibit "A."

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EXHIBIT "2."

Pierce Oil Corporation,

526 Unity Building,

Tulsa, Okla.

February 26, 1918.

Phoenix Refining Co.,

Tulsa, Okla.

Attention Mr. Thomas Melvin.

GENTLEMEN:

I have this day received notice from Eben Richards, Vice President of the Pierce Oil Corporation, to notify you that beginning with Feb. 26th our pipeage charge for oil transported for the Phoenix Refining Co. from Tiger Pumping Station to your Sand Springs Refinery will be 20¢ per barrel plus the war tax. Also that after March 21st we will not be able to run any oil for you as the entire capacity of our pipe line will be required for our refinery.

Kindly acknowledge receipt of this notice.

Very truly yours,

M. J. GROGAN,

Supt. Prod. & P. L. Dept.

M. J. G.—E. B.

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EXHIBIT "3."

Agreement.

This agreement, Made and entered into this 29th day of May, 1917, by and between Phoenix Refining Company, a corporation organized under the laws of the State of Oklahoma, party of the first part, and Pierce Oil Corporation, a corporation organized under the laws of the State of Virginia, party of the second part,

Witnesseth: That

Whereas, first party on the 19th day of May, 1917, made and entered into a contract with the Tidal Oil Company, a corporation, organized under the laws of the United States in force in Indian Territory, for the purchase of all merchantable fresh run Cushing crude oil, of which said Tidal Oil Company is the owner and the marketing of which it controls, produced from and on the lands described in the list attached to said contract, which said list and contract are referred to, attached hereto and made a part hereof; and

Whereas, first party desires to sell and second party desires to purchase a certain interest in said contract and the right to take over a certain amount of said crude thereunder and subject to the terms thereof; provided that first party shall at all times be entitled to a minimum of one thousand (1,000) barrels daily run, and, at its option, such greater amount as it may desire up to a maximum of one-half of the entire daily run produced and sold under the terms of said agreement with the Tidal Oil Company;

Now, therefore, it is agreed by and between the parties hereto:

1st. That second party, subject to the terms of said agreement entered into between first party and the Tidal Oil Company, a copy of which is attached hereto and marked Exhibit "A" shall proceed to make such connections as may be necessary and run said merchantable, fresh run Cushing crude through its pipe line for delivery to

82 first party, Second party shall deliver a minimum of one thousand (1,000) barrels daily and such greater amount as first party herein may desire, up to a maximum amount of one-half of said entire production, to first party at its refinery at Sand Springs, Oklahoma;

2nd. The entire amount of said runs not delivered to first party shall be and become the property of second party, and second party shall pay to first party for said oil the market price posted by the Prairie Oil & Gas Company for Kansas and Oklahoma crude oil on the date of delivery, as defined in said contract attached hereto, plus seventy-four (74¢) cents per barrel, premium over and above and in addition to said posted price, and said Phoenix Refining Company agrees, upon payment to it by said Pierce Oil Corporation of said sum, to make proper payment to the Tidal Oil Company for same, it being understood that the date of delivery as to each stock tank shall mean the date on which second party begins to run oil from said stock tank into the pipe line of the Tidal Oil Company for connections to its pipe line;

3rd. The second party agrees that it will on or about the 20th day of each month make payment for all oil run and delivered from the 1st day to the 15th day, both inclusive, of said month, and that for all oil run and delivered from the 16th day of the month to the last day of the month, both inclusive, it will make payment on or before the 5th day of the succeeding month. All payments are to be made on the basis of 97% tank tables;

4th. It is agreed that the place of delivery, in reference to the taking of said oil from the Tidal Oil Company, shall be the stock tanks on each lease of said Company set forth in Exhibit "A" and that second party herein shall take said oil from said stock tanks.

5th. All expenses, including labor incurred in the pumping or delivery of said oil from said stock tanks, together with all expense for the use of the gauging system of the Tidal Oil Company, as set forth in paragraphs six and seven of Exhibit "A" attached hereto, shall be paid in the first instance to the Tidal Oil Company by the first party herein and shall be pro-rated by the parties hereto in proportion to the amount of oil received by each of said parties. Second party shall make settlement with first party for said expense promptly and to the end that first party will not be required to advance the amount thereof to said Tidal Oil Company before receipt of same from second party herein;

6th. It is further agreed that if it necessary to use gas for the purpose of pumping said oil from stock tanks into the pipe line, as provided by paragraph eight of Exhibit "A" attached hereto, the amount thereof shall be paid by the first party to said Tidal Oil Company and said expense shall be prorated between the parties hereto on the basis of oil received by each of said parties. Second party will make settlement for same promptly with first party, to the end that first party will not be required to advance same to said Tidal Oil Company before receipt of payment from second party herein;

7th. It is understood and agreed that the oil reserved to and run for the account of first party hereunder will be delivered by second party to first party at its refinery located at Sand Springs, Oklahoma, and that the transportation charges of second party against first party for transportation thereof are covered by a separate contract heretofore executed under the date of February 23, 1917, which is hereby referred to;

8th. It is further agreed that in the event of loss by reason of breakdown in the line of the Exchange Pipe Line Company, which is under the control of the Tidal Oil Company and is not owned or controlled by either of the parties hereto, said loss shall be pro-rated by the parties hereto on the basis of the amount of oil to be delivered to each of said parties during the time of said breakdown;

9th. It is specifically agreed that the parties have in contemplation the agreement entered into by first party with said

84 Tidal Oil Company, which is attached to this contract, and that this agreement is made for the purpose of carrying out same, to the end that first party may receive a minimum of one thousand (1,000) barrels daily of said oil and such other amount as it desires up to an equal one-half part of the entire runs provided for in said agreement, and that second party shall take and pay for the balance of the runs sold under said contract attached hereto and marked Exhibit "A";

10th. It is further agreed that this agreement shall be in full force and effect during the life of said agreement marked Exhibit "A" and made a part hereof, and that deliveries of oil shall commence and end pursuant to the terms thereof.

In witness whereof the parties have signed these presents the day and year first above written.

PHOENIX REFINING COMPANY,
By THOS. P. MELVIN,

Mgr.
PIERCE OIL CORPORATION,
By CLAY ARTHUR PIERCE,
President.

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EXHIBIT "A."

Agreement.

This agreement, Made and entered into this 19th day of May, 1917, by and between Phoenix Refining Company, a corporation organized and existing under and by virtue of the laws in force in the State of Oklahoma, with its principal place of business at Tulsa, in said State, party of the first part, and hereinafter for convenience called the Buyer, and Tidal Oil Company, a corporation organized under the laws of the United States in force in Indian Territory, now a part of the State of Oklahoma, with its principal office at Tulsa in said State, party of the second part, hereinafter for convenience called the Seller, witnesseth: That

In consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged by the Seller, and for other good and valuable considerations, including the covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

1st. The Seller hereby sells and agrees to deliver to the Buyer, and the Buyer hereby purchases and agrees to receive from the Seller all merchantable fresh run Cushing crude oil of which Seller is the owner and the marketing of which the Seller controls, produced from and on the lands described in the list hereto attached, marked Exhibit "A" and made a part hereof, for a period of three (3) months beginning on the 19th day of May, 1917, and including said date, and ending on the 18th day of August, 1917, including said date.

2nd. It is agreed that this contract shall apply to the following interests in said lease in which Seller is the owner of a valid leasehold estate for oil and gas, as follows:

Norramie.....	All Working Interest; also Royalty while controlled by the Seller.
Lizzie Brown.....	All Working interest.
Lessey Yarhola	} All Working Interest; also Royalty while controlled by the Seller.
Jessie Tiger	
Jeannetta Tiger	
Sam Richards	

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Sam Keys.....	All Working Interest.
Lena Fife.....	One-half Working Interest and Royalty.
Q. V. Jackson.....	One-half Working Interest.

3rd. The Buyer agrees to pay to the Seller for said oil the market price posted by the Prairie Oil & Gas Company for Kansas and Oklahoma crude oil on the date of delivery, plus seventy-four (74¢) cents per barrel premium over and above, and in addition to said posted price, and the Seller agrees to take said price for said oil, it being understood that the "date of delivery" as to each stock tank shall mean the date on which the Buyer begins to run the oil from said stock tank of the Seller into the pipe line with which the Buyer may connect.

4th. The Buyer agrees that it will on or before the 20th day of each month make payment for all oil run and delivered from the first day to the 15th day, both inclusive, of said month, and that for all oil run and delivered from the 16th day of the month to the 1st day of the month, both inclusive, it will make payment on or before the 5th day of the succeeding month. All payments are to be made on the basis of 97% tank tables.

5th. It is agreed that the place of delivery by the Seller shall be the stock tanks on each lease, and that the Seller shall deliver the oil into said stock tanks, and that the same shall be received by the Buyer from said stock tanks.

6th. The Seller agrees to furnish the Buyer, during the term of this contract, the use of its gathering system, as now installed, including boilers, pumps, water tanks and pipe lines, for the purpose of delivery of said oil from the stock tanks of the seller to the pipe line with which the Buyer may connect, and to receive as compensation therefor a sum equal to one and one-half cents (1½¢) per barrel for all oil delivered by the Seller into said stock tanks under this agreement, said compensation to be over and above and separate and apart from the price received for the oil as hereinabove set out. The Buyer agrees to pay said sum for the use of said gathering system, and to make remittances for the same at the same time as remittances are made for the oil, it being understood that the Buyer shall in no event use or permit the use of salt water in any of

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said boilers, and shall maintain said gathering system, including boilers, pumps, water tanks and pipe lines, at its own expense, in good repair, and upon the termination of this contract the same shall be returned, or left, in as good conditions and as good repair as the same is on this date, ordinary wear and tear excepted.

7th. The Buyer shall pay all expenses, including labor, incurred in the pumping or delivery of said oil from the stock tanks of the Seller into the pipe line with which the Buyer may connect, it being understood that the Seller shall be at no expense after delivery of the oil into its stock tanks.

8th. It is further agreed that if, after the Seller has used sufficient gas for the operation of its leases, there remains available sufficient gas for the purpose of pumping the oil from the stock tanks into the pipe line with which the Buyer may connect, the Buyer shall use as much of said gas as is reasonably necessary for said purpose, and shall pay to the Seller therefor at the rate of Two and 50-100 Dollars (\$2.50) for each six (6) hours, or fraction thereof, that is to say if gas is used to pump out a tank and its delivery completed in less than six hours (6) a charge will be made therefor of Two and 50-100 Dollars (\$2.50), and if it requires more than six (6) hours, and not more than twelve (12) hours, a charge of Five Dollars (\$5.00) will be made, for the gas used for each boiler which sum shall be net to the Seller, it being understood that the Buyer shall bear any
 88 and all expenses necessary or incident to the delivery or utilization of said gas. Remittances for gas shall be made at the same time as remittances are made for oil.

9th. It is further understood and agreed that all strappings of tanks for the purpose of making tables shall be taken and done in the presence of a representative of the Seller, and tables furnished by the Seller without cost, and that all measurements of oil shall be evidenced by run tickets, to be witnessed by a representative of the Seller, and that the Buyer will furnish to the Seller such run tickets in duplicate except as to the lease described as the Q. V. Jackson lease, and as to said lease, the Seller shall furnish the Buyer such run tickets in quadruplicate.

10th. It is further agreed that in case the Seller shall, during the term of this contract, sell by bona fide sale for value its interest in the property described in Exhibit "A," or its interest in any of said property, said Seller shall have the right to terminate this contract as to the oil from the interests sold, or in case of a sale of its interest in all the properties, to terminate the entire contract, provided that said Seller shall give to the Buyer fifteen days' notice thereof in writing of any sale of any interest therein, said notice to be served on the Buyer by delivery thereof to its President, Vice-President or Secretary, or the person in charge of its principal place of business, said contract to terminate fifteen days from the date of the service of said notice, said fifteen days to include the date of service.

11th. It is further understood and agreed that the Seller is negotiating for the purchase and control of oil and gas lease on the following described lands, to-wit:

N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 3, Township 17 N., Range 7 E.;

S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 9, Township 17 N., Range 7 E.;

S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Section 3, Township 17 N., Range 7 E.;

89 and that in case said lease are purchased and controlled by the said Seller during the term of this contract, all the provisions herein shall apply to oil thereafter produced from said properties, the marketing of which is controlled by the Seller.

12th. The right to assign this contract or any interest therein, in whole or in part, is specifically granted to the Buyer, subject however, to the written consent of the Seller.

13th. This agreement shall be binding upon the parties hereto, their successors and assigns.

In witness whereof, the parties hereto have signed these presents the day and year first above written.

PHOENIX REFINING COMPANY,
By _____,
President.

Attest:

_____,
Secretary.

TIDAL OIL COMPANY,
By _____,
Vice-President.

Attest:

_____,
Secretary.

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EXHIBIT "A".

Farm name.	Description.
Norramic	River bed lease in the Northeast Quarter and Northwest quarter of Section 17, Township 18, Range 7.
Lizzie Brown	North Half of Northeast Quarter and Southeast quarter of Northeast Quarter of Section 9, Township 17, Range 7.
Lessey Yarhola ...	North Half of Southeast Quarter of Section Township 17, Range 7.
Jessie Tiger	Northeast Quarter of Section 17, Township 17, Range 7.
Jeanetta Tiger....	Northwest Quarter of Section 16, Township 17, Range 7.
Sam Richards....	North Half of Southwest Quarter and Southwest Quarter of Southwest Quarter of Section 4, Township 17, Range 7.
Sam Keys.....	Northeast Quarter of Section 28, Township 17, Range 7.
Lena Fife.....	North Half of Northeast Quarter and East Half of Northwest Quarter of Section 22, Township 17, Range 7.
Q. V. Jackson....	South Half of Southwest Quarter and Northwest Quarter of Southwest Quarter of Section 2, and the Northeast Quarter of the Southeast quarter of Section 3, Township 17, Range 7.

All of said above described lands being located in Creek County, State of Oklahoma.

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Agreement.

This agreement, made this 23rd day of February, 1916, by and between Clay Arthur Pierce, of St. Louis, Missouri, party of the first part, and the Phoenix Refining Company, a corporation organized under the laws of the State of Oklahoma, of the second part, Witnesseth.

Whereas, the party of the first part is operating in Oklahoma an oil pipe line from what is termed the "Cushing Field" in Cushing County, Oklahoma, to a point in the vicinity of Sand Springs, Oklahoma; and

Whereas, the capacity and location of said pipe line is known to second party; and

Whereas, second party is engaged in the operation of an oil refinery in the vicinity of Sand Springs, Oklahoma, and uses, in its business, oil produced in the Cushing Field:

Now, for the consideration herein appearing, and a valuable consideration passing between the parties, it is agreed:

First.

The first party will, on request, and at the time and in the quantities designated by the second party, subject to the provisions hereof, transport crude oil, the property of the second party, from points in said Cushing Field designated by the second party, within a radius of ten thousand (10,000) feet from the pumping station of the first party's said pipe line, known as the "Tiger Pumping Station," and located in said Cushing Field, through said pipe line, and deliver the same into the tanks of second party at its refinery at Sand Springs, Oklahoma.

Second.

For the services of first party in the transporting of said oil, and the services incident thereto, in addition to the covenants hereof, the party of the second part agrees to pay to the party of the first part, at the times herein set forth, the sum of ten cents (10¢) per barrel of crude oil, for each and every barrel of forty two (42) gallons each transported by first party through his said oil pipe line from said Cushing Field to the said tanks of said second party located as aforesaid.

It is covenanted:

(a) Except as herein provided, this contract shall be in force and effect from date of its execution to the first day of January, 1917.

(b) During the term of this contract, second party agrees to offer for transportation through the pipe line of first party, under the terms hereof, all crude oil, from the Cushing Field, used by it in its refinery to the amount of two thousand (2,000) barrels per day, and the first party agrees to accept and transport the same under the terms hereof.

(c) First party will accept for transportation hereunder Cushing crude oil of not less than 39 degrees gravity free from brown sediment and water, or other foreign matter, on a basis of three per cent (3%) deduction for shrinkage, and the gaugers of first party will pass on the quality and kind of oil to be transported; first party to be at no expense in the taking of said oil, other than for gathering lines, connections, and the services of its gaugers.

(d) First party will install and maintain adequate pipe line facilities and connections incident to the gathering of the oil in the

Cushing Field, within the radius aforesaid, at his own expense provided, that if in any gathering line of one mile or more in length second party does not deliver to first party for transportation one hundred thousand (100,000) barrels of oil, second party shall thereupon become indebted to first party in an amount equal to the cost of installing said gathering lines, less the cost of the materials used in said line; provided, that the pipe line of the second party now laid to tanks of second party from the six inch line of the first party in the vicinity of Sand Springs, Oklahoma, shall be used for the transportation of oil hereunder without expense to first party, and the said line shall be maintained in a proper condition at the expense of the second party.

93 (e) Settlements for oil transported shall be made between the parties on the seventh (7th), fourteenth (14th), twenty-first (21st) and the last days of each month, and payment of each settlement shall be made by second party on the succeeding seventh (7th) day.

(f) This agreement may be terminated by the first party for failure of the second party to make payments in money as herein provided, and may be terminated by second party on account of failure of first party to make prompt delivery of the oil to be transported hereunder, and also may be terminated by either party where the performance of the agreement is prevented by the act of God or causes beyond the control of the parties, provided, however, that either party desiring to terminate this agreement for the causes mentioned, shall give notice in writing to the other party of his or her intention so to do, and the agreement shall remain in force until such notice is given.

(g) This agreement is subject to the rules and regulations of the Corporation Commission and the laws of the State of Oklahoma; being understood that in the event this contract conflicts with an order of the Corporation Commission of the State of Oklahoma, or with any law of the State of Oklahoma, that the first party is under no obligation to test the validity of the same, but may, at his option, proceed in accordance with said law or order.

(b) Second party warrants that it is, or will be, the owner of the crude oil which it may request first party to transport for it, and will hold first party free and harmless on account of any claims or claims of adverse interests therein, and upon such adverse claim being made, will furnish first party indemnity satisfactory to him.

(i) Tender by first party to the tankage of second party of crude oil transported under the terms hereof, shall be deemed a compliance by the first party with the obligations here undertaken, and thereupon second party shall be liable to first party for the cost of transportation as herein appears.

94 In witness whereof, The Parties hereto have executed this agreement, in duplicate, the day and year first above written.

CLAY ARTHUR PIERCE,
First Party.
PHOENIX REFINING COMPANY,
By JAS. KING DUFFY,
President,
Second Party.

Attest:

[SEAL.] THOS. P. MELVIN,
Secretary.

Approved as to form 2-23-16.

S. D. JOHNSON,
General Attorney.

Exhibit "4."

95 EXHIBIT "5."

Agreement.

This agreement, Made this 20th day of January, 1915, by and between Clay Arthur Pierce, of St. Louis, Missouri, party of the first part, and the Phoenix Refining Company, a corporation organized under the laws of the State of Oklahoma, of the second part, Witnesseth:

Whereas, The party of the first part is operating in Oklahoma an oil pipe line from what is termed the "Cushing Field" in Creek County, Oklahoma, to a point in the vicinity of Sand Springs, Oklahoma; and

Whereas, The capacity and location of said pipe line is known to second party; and

Whereas, Second party is engaged in the operation of an oil refinery in the vicinity of Sand Springs, Oklahoma, and uses, in its business, oil produced in the Cushing Field:

Now, For the consideration herein appearing, and a valuable consideration passing between the parties, it is agreed:

I.

The first party will, on request, and at the time and in the quantities designated by the second party, subject to the provisions hereof, transport crude oil, the property of the second party, from points in said Cushing Field designated by the second party, within a radius of ten thousand (10,000) feet from the pumping station of the first party's said pipe line, known as the "Tiger Pumping Station," and located in said Cushing Field, through said pipe line, and deliver the same into the tanks of second party at its refinery at Sand Springs, Oklahoma.

II.

For the services of first party in the transporting of said oil, and the services incident thereto, in addition to the covenants hereof, the party of the second part agrees to pay to the party of the first part, at the times herein set forth, the sum of ten cents, (10¢) per barrel of crude oil, for each and every barrel of forty-two (42) gallons each transported by first party through his said oil pipe line from said Cushing Field to the said tanks of second party located as aforesaid.

It is covenanted:

(a) Except as herein provided, this contract shall be in force and effect from date of its execution to the first day of January, 1916.

(b) During the term of this contract, second party agrees to offer for transportation through the pipe line of first party, under the terms hereof, all crude oil, from the Cushing Field, used by it in its refinery to the amount of two thousand (2,000) barrels per day, and the first party agrees to accept and transport the same under the terms hereof.

(c) First party will accept for transportation hereunder Cushing crude oil of not less than 39 degrees gravity, free from brown sediment and water or other foreign matter, on a basis of three per cent (3%) reduction for shrinkage, and the gaugers of first party will pass on the quality and kind of oil to be transported; first party to be at no expense in the taking of said oil, other than for gathering line connections, and the services of its gaugers.

(d) First party will install and maintain adequate pipe line facilities and connections incident to the gathering of the oil in the Cushing Field, within the radius aforesaid, at his own expense; provided, that if in any gathering line of one mile or more in length second party does not deliver to first party for transportation one hundred thousand (100,000) barrels of oil, second party shall thereupon become indebted to first party in an amount equal to the cost of installing said gathering lines, less the cost of the material in said line; provided, that the pipe line of the second party now laid to the tanks of second party from the six inch pipe line of the first party in the vicinity of Sand Springs, Oklahoma, shall be used for the transportation of oil hereunder without expense to first party, and the said line shall be maintained in a proper condition at the expense of second party.

(e) Settlements for oil transported shall be made between the parties on the seventh (7th), fourteenth (14), twenty-first (21), and the last days of each month, and payment of each settlement shall be made by second party on the succeeding seventh (7th) day.

(f) This agreement may be terminated by the first party for failure of the second party to make payments in money as hereof.

provided, and may be terminated by second party on account of failure of first party to make prompt delivery of the oil to be transported by it hereunder, and also may be terminated by either party where the performance of the agreement is prevented by the act of God or causes beyond the control of the parties, Provided, however, that either party desiring to terminate the agreement for the causes mentioned, shall give notice in writing to the other party of his or its intention to do so, and the agreement shall remain in force until said notice is given.

(g) This agreement is subject to the rules and regulations of the Corporation Commission and the laws of the State of Oklahoma; it being understood that in the event this contract conflicts with any order of the Corporation Commission of the State of Oklahoma, or with any law of the State of Oklahoma, that the first party is under no obligation to test the validity of the same, but may, at his option, proceed in accordance with said law or order.

(h) Second party warrants that it is, or will be, the owner of all crude oil which it may request first party to transport for it, and will hold first party free and harmless on account of any claim or claims of adverse interests therein, and upon such adverse claim being made, will furnish first party indemnity satisfactory to him.

(i) Tender by first party to the tankage of second party of crude oil transported under the terms hereof, shall be deemed a compliance by the first party with the obligations here undertaken, and thereupon second party shall be liable to first party for the cost of transportation as herein appears.

In witness whereof, The parties hereto have executed this agreement, in duplicate, the day and year first above written.

CLAY ARTHUR PIERCE,
First Party.
PHOENIX REFINING COMPANY,
JAS. KING DUFFY,
Pres.,
Second Party.

Attest:

[SEAL.] EUGENE D. FARQUER,
Secretary.

98 The application of the defendants for exemption and the ex parte order made, filed, entered and recorded thereon which were considered by said Commission as in evidence were in words and figures as follows:

Application.

To the Honorable Corporation Commission of the State of Oklahoma
Oklahoma City, Oklahoma:

Comes now the Pierce Oil Corporation, a corporation, and C. A. Pierce, and show your Honorable Body that the Commission has made a request for an annual report covering oil or gas pipe line utility, and that said request has been received by the C. A. Pierce Pipe Line.

Your Petitioners show that the Pierce Oil Corporation is lawfully transacting business in the State of Oklahoma, that its principal business therein is the refining of oil, that it has a Refinery located at Sand Springs, Oklahoma, with a capacity of not less than Ten Thousand (10,000) barrels daily; that said Company is running said Refinery at full capacity to meet the necessities caused by present War conditions.

That in the year 1913 there was constructed for the use of said Refinery, and for the purpose of supplying the same with crude petroleum a pipe line from Sand Springs, Oklahoma, to the Cushing field, a distance of approximately 33 miles; that said pipe line is not now and never has been used as a common carrier or as a public pipe line, but that the same is merely a refinery line, built for the exclusive use and benefit of the Refinery of said Company at Sand Springs.

That at the time said line was constructed the right of way therefor was for the sake of convenience taken in the name of C. A. Pierce, President of the Pierce Oil Corporation; that C. A. Pierce holds said title as Trustee for the Pierce Oil Corporation.

That the capacity of said pipe line is barely sufficient to supply the Refinery needs, and that said pipe line cannot accept deliveries to third persons, without hampering the productive capacity of said Refinery.

100 Your Petitioners further show that the production of the Cushing Field has declined in a marked degree, and that the producers in the Cushing field do not at this time require the service of the said Pierce Pipe Line; that there is a strong demand for said Cushing crude; that the same sells in many instances for a premium of 75¢ per barrel in excess of the posted market price and that said field is served by the following common carrier lines:

1. Prairie Pipe Line Company,
2. Texas Company,
3. Oklahoma Pipe Line Company,
4. Cosden Pipe Line Company,
5. Sinclair Cudahy Pipe Line Company,
6. Magnolia Petroleum Company,
7. The Empire Pipe Line Company,

8. Gulf Pipe Line Company.

That in addition to the foregoing common carrier lines there are various refinery lines which serve the producers in the said Cushing field.

That the oil pumped through said pipe line is the property of the Pierce Oil Corporation, and is run to its Refinery for Refinery purposes; that the nature and extent of the business transacted insofar as it affects said pipe line, does not affect in any way the public and the conduct of said business is not a matter of public consequence.

Wherefore Petitioners pray that said pipe line be declared exempt from the jurisdiction of the Honorable Corporation Commission and that a proper order be issued by your Honorable Body, setting forth the fact of such exemption.

PIERCE OIL CORPORATION AND
C. A. PIERCE,
President,
By RICE & LYONS AND
BOYLE & PRIEST,
Their Attorneys.

01 STATE OF OKLAHOMA,
County of Oklahoma, ss:

M. J. Grogan, having been first duly sworn deposes and says:
That he is the Superintendent of Pipe Line for the Pierce Oil Corporation, and has charge of the Pipe Line referred to in the foregoing application; that he has read the foregoing application, and that the matters therein stated are true.

M. J. GROGAN.

Subscribed and sworn to before me this the 7th day of Feb., 1918.
[SEAL.]

M. C. JAY,
Notary Public.

My commission expires Apr. 1, 1920.

02 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

re Application PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Journal Entry.

Appearances: Rice & Lyons, by T. D. Lyons, and Boyle & Priest, G. T. Priest.

Be it remembered that on this the 7th day of February, 1918, there came on for consideration the matter of the application of the Pierce

Oil Corporation and C. A. Pierce, for exemption from the jurisdiction of the Corporation Commission.

Applicants show to the Commission, that the Pierce Oil Corporation is engaged in the business of refining crude oil at its Refinery located at Sand Springs, Okla., that said refinery has a capacity of not less than ten thousand barrels daily; that said company is running said refinery at full capacity to meet the necessities caused by present war conditions.

Applicants further show that in the year of 1913, there was constructed for the use of said refinery and for the purpose of supplying the same with crude petroleum a pipe line from Sand Springs, Oklahoma, to the Cushing Field, a distance of approximately thirty three miles; that said pipe line is not now and never has been used as a common carrier or as a public pipe line but that same is merely a refinery line built for the exclusive use and benefit of the refinery of said Company at Sand Springs.

Applicants further show that at the time said line was constructed the right-of-way therefor was for the sake of convenience taken in the name of C. A. Pierce, President of the Pierce Oil Corporation, that C. A. Pierce holds said title as trustee for the Pierce Oil Corporation.

Applicants further show that the capacity of said pipe line is barely sufficient to supply the refinery needs and the said pipe line cannot accept deliveries to third persons without hampering the productive capacity of said refinery.

Applicants further show that the oil pumped through said pipe line is the property of the Pierce Oil Corporation, and is run to its refinery for refinery purposes; and state that the nature and extent of the business transacted insofar as it affects said pipe line, does not in any way affect the public, and that the conduct of said business is not a matter of public consequence.

Applicants further show that a map and plats showing location of said line has been filed with the Commission as provided by law.

Applicants state that a statement will be filed with the Corporation Commission accepting and agreeing to abide by all of the provisions, terms and stipulations as set forth and contained in Section 4318, Rev. Laws of Okla., 1910, Chap. 25, Sess. Laws of 1915, Chap. 207 Sess. Laws 1917; all the provisions of the Constitution of the

103 State of Oklahoma, affecting or pertaining in any manner to oil pipe lines and Order No. 1299 the oil and gas order of the Corporation Commission now in effect, and such other orders as the Corporation Commission may issue from time to time insofar as the foregoing affects said line.

The Commission finds that the applications herein may be granted under the conditions herein set forth and with the understanding that the order made herein will be subject to hearing; or modification or revocation upon notice by the Commission at any time.

Wherefore, the premises considered, it is therefore ordered that the Pierce Oil Corporation and C. A. Pierce shall be exempted from the jurisdiction of the Corporation Commission as to said C. A. Pierce Pipe line.

Done at Oklahoma City, Oklahoma, the day and date first above mentioned.

CORPORATION COMMISSION OF
OKLAHOMA,

W. D. HUMPHREY,
Chairman.

CAMPBELL RUSSELL,
Commissioner.

ART. L. WALKER,
Commissioner.

Attest:

[SEAL.] J. S. GRAW,
Acting Secretary.

104 The foregoing was all the evidence offered or introduced at the trial of said cause.

And thereafterwards on the 7th day of December, 1918, a decision was made, filed, entered and recorded in said cause entitled "Findings of Fact, Opinion and Order," which is in words and figures as follows:

105 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHOENIX REFINING COMPANY, a Corporation, Complain-t,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Findings of Fact, Opinion and Order.

Appearances:

For the Phoenix Refining Company, Stuart, Cruce & Riddle, Attorneys, by C. B. Stuart and M. K. Cruce, Oklahoma City, Oklahoma.

For the Pierce Oil Corporation and Clay Arthur Pierce, Boyle & Priest, by Geo. T. Triest, St. Louis, Missouri, and Rice and Lyons, Tulsa, Oklahoma.

By the COMMISSION:

Complaint was filed by the Phoenix Refining Company, a corporation vs. the Pierce Oil Corporation and Clay Arthur Pierce. The matter came on regularly for hearing before the Commission, parties being represented by counsel and other representatives.

Complainant alleges, in substance: That the Phoenix Refining Company is a corporation organized under the laws of the State of

Oklahoma and engaged in operating a refinery at the Town of Sand Springs, Oklahoma, at which place it receives crude petroleum and there refines same, extracting therefrom gasoline, petroleum oil and other products; that in connection with its refinery business it owns and operates various oil wells situated in Sections 18 and 19, Township 18 North, Range 7 East, and in the vicinity thereof in Creek County, Oklahoma; that said wells have a daily production of 1,000 barrels per day, and that the oil therefrom is necessary to the successful and profitable operation of complainant's refinery at Sand Springs; that defendant, the Pierce Oil Corporation, is the owner of a pipe line running from what is known as the Cushing oil field in Creek County, Oklahoma, to said City of Sand Springs, Oklahoma, through which for many years it has, for hire, transported oil, from the said Cushing field to Sand Springs and to various other towns within the State of Oklahoma; that defendants' said line has been, during all the said time, and is now a common carrier line; that defendants own and operate the only pipe line between the said Cushing field and the City of Sand Springs and through which complainant's oil can be transported; that complainant has from time to

time made contracts with the said Pierce Oil Corporation governing the transportation of oil through defendants' said line and sometime in March 1918, complainant was notified by the Pierce Oil Corporation that on the 21st day of March, 1918, it would refuse to transport for complainant any oil from its wells in the said Cushing field to its refinery, at any price; that the matter involved herein is one which concerns the company complaining, and also the general public.

Defendants' answer sets up a general denial of all the material facts pleaded by complainant, except as to the existence of the pipe line in question, and alleges that said line was constructed for the purpose of supplying oil to the refinery of the Pierce Oil Corporation at Sand Springs, Oklahoma; that the capacity of said line is insufficient to supply the refinery of the Pierce Oil Corporation and to carry oil for other persons; and that the said Pierce Oil Corporation has made purchase of Cushing crude oil to an amount of many hundreds of thousands of Dollars in reliance to the use of said transportation line to its said refinery at Sand Springs.

A short time previous to the filing of the complaint herein application was filed on behalf of the Pierce Oil Corporation and C. A. Pierce to be exempted from the jurisdiction of the Corporation Commission, on the line in question. (See Cause No. 3252, Journal Entry of the Commission of February 7, 1918.)

The pleadings show that said line was constructed in the year 1913 between the Cushing field and Sand Springs, Oklahoma, a distance of approximately thirty-three (33) miles; that at the time the line was constructed the right of way therefor was taken in the name of C. A. Pierce, President of the Pierce Oil Corporation, and that C. A. Pierce holds title to same as trustee for the aforesaid corporation.

Report of the pipe line department of the Pierce Oil Corporation made to the Commission, under Commission's Order No. 845, shows that the total charges to property account, including pipe, right of

way, tanks, etc., amounted, June 30, 1918, to \$263,030.98, for said line.

The evidence shows that it has been the custom of the Pierce Oil Corporation to carry oil for others through this line in question, but defendants' testimony is to the effect that such oil was carried partly as a matter of reciprocal obligation, or accommodation. The facts do not show that defendants have ever pretended that their line was a common carrier line or that they made a general business of carrying oil for the public. Oil was carried for consideration through this line by the defendants when it could be done without inconvenience.

The evidence further shows that at the time of the hearing complainant had a production of thirty (30) barrels per day from wells which it owned and operated and that this amount of oil was still being transported by the Pierce Oil Corporation through its line to complainant's refinery at Sand Springs, although notice had been served by the Pierce Oil Corporation on complainant that no oil would be carried through the pipe line after the date alleged in complainant's pleadings.

The evidence further shows that complainant has contracted with the Pierce Oil Corporation from time to time for the carrying of oil from the Cushing field through the line in question to complainant's refinery at Sand Springs, and that a contract of this character was in effect when the production of the Cushing field was considerably greater than it is at the present time, and that oil was also carried for hire for other persons through said line.

107 The evidence further shows that the oil, owned by the Pierce Oil Corporation and carried by it through its line is generally purchased from other persons and that sometime prior to the filing of the complaint herein it secured a contract with the Tidal Oil Company for a certain amount of production through competitive bidding, in which complainant was one of the bidders. This may or may not have led to the application of the Pierce Oil Corporation to be exempted from the laws governing common carriers, in reference to the pipe line in question, and to the present controversy.

The Commission finds that the line in question was constructed for the primary purpose of carrying crude oil to defendants' refinery at Sand Springs, Oklahoma; that the Pierce Oil Corporation has never held itself out as a common carrier of oil, but that it has carried oil for other persons through its line for hire, when convenient to it to do so; that the oil which the Pierce Oil Corporation carries to its refinery at Sand Springs through this line is generally purchased from other producers, and in competition with other purchasers.

There is some conflict in the testimony as to whether or not there are other lines available through which complainant might have its oil transported from the Cushing field to Sand Springs, but the conclusion of the Commission, from the study of the testimony is, and the Commission so finds, that at the time of the hearing there was no other practicable or available line through which complainant could

have its crude oil transported from its well in the Cushing field to refinery at Sand Springs.

The duty of the Commission, therefore, is to apply the law to facts found and to determine whether or not the Pierce Oil Corporation has any liability or duty as a common carrier. In determining this question, the Commission will consider the law enacted by our Legislature and the Court decisions cited in briefs filed by attorneys herein.

The law, upon which complainant relies for relief, is found in Sec. 4, Art. 9, Constitution of Oklahoma, Ch. 52 Secs. 4304-4318, Revised Laws, 1910; Secs. 532-576 Corporation Commission Laws, 1917, Sec. 4, Art. 9 Const., Sec. 562 Corporation Commission Laws, 1917, provides:

"Oil Pipe Lines to be Controlled and Regulated by the Corporation Commission—to Receive and Transport each Other's Tonnage, etc. All oil pipe companies shall be subject to the reasonable control and regulation of the Corporation Commission, and shall receive and transport each other tonnage or oils, or commodities, under such rules and regulations as shall be prescribed by law, or such commission."

The portions of the legislative enactment pertinent hereto are:

"Sec. 4307 R. L. 1910, Sec. 566, Corporation Commission Laws 1917. "Common Purchasers of Oil-Required to Purchase. Every corporation, joint stock company, partnership or other person claiming or exercising the right to carry or transport crude oil or petroleum or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire or otherwise

108 within the limits of this State, as allowed by, and upon compliance with the requirements of this article, as owner, licensee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum there shall be deemed a common purchaser thereof, and shall purchase of the petroleum in the vicinity of, or which may reasonably be reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or any person as against another, shall fully perform all the duties of a common purchaser; but shall be legally excusable from purchasing and transporting all the petroleum produced, then it shall purchase and transport petroleum from each person and producer ratably, in proportion to average daily production; and such common purchasers are hereby expressly prohibited from discriminating in price or amount for grades of oil, or facilities as between producers or persons; and in event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage production or storage in which it may be interested, directly or indirectly, in whole or in part, and its own production and storage shall be treated as that of any other person or producer."

Sec. 4308 R. L. 1910, Sec. 537 Corporation Commission Laws 1917. "Some-Exceptions. All persons, firms, associations and

Corporations are exempt from the provisions of this article where the nature and extent of their business are such that the public needs no regulation in the same and the conduct of the same is not a matter of public consequence; and for this purpose the district courts of the State and the Corporation Commission are vested with jurisdiction to determine such exceptions in any action or proceeding properly before them, as provided in this article."

Sec. 4309, R. L. 1910, Sec. 568 Corporation Commission Laws, 1917. "Oil Carriers are Common Carriers—Discrimination Prohibited. Every corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within the State, and by virtue of and in conformity to any law incapable of revocation by any laws of this State or of the United States, or by virtue of and in conformity to the provisions of this article, shall be deemed a common carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage, or delivery of any crude, stock or storage oil, or any product thereof, in its possession or control, or in which it may be interested, directly or indirectly."

Sec. 4310, R. L. 1910, Sec. 569 Corporation Commission Laws, 1917. "Oil Carriers Not to be Interested in Producing. It shall be unlawful for any corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or otherwise, within the limits of the article, and not becoming a common purchaser as defined by, and accepting the provisions of this article, to own or operate, directly or indirectly, any oil well, oil leases or oil holdings or interests in this State, and each of said corporations, joint stock companies, partnerships or persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in oil wells, oil leases or oil holdings or interests in this State."

Sec. 4311, R. L. 1910, Sec. 570 Corporation Commission Laws, 1917. "Acceptance of Laws and Plats to be filed. Before any corporation, joint stock company, partnership or person shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain or operate pipe lines, fixtures or equipment hereunto belonging, or used in connection therewith, as authorized by the provisions of this article, or shall have, possess, enjoy, or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this article, every such corporation, joint stock company, partnership or other person shall file in the office of the corporation commission a proper and explicit authorized acceptance of the provisions of this article and the Constitution of this State, and, in case of pipe lines, a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended

size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the corporation commission, the proper parties, as required by said commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectfully with full and explicit information as to their capacity, size, and location, and the capacity of their pumping stations, gate valves, check valves and connections, of all kinds, required or used in the operation thereof.

We have not been advised of decisions of our own Court or of the Courts of the other states constructing these or similar laws in reference to a state of facts similar to those herein, but the Supreme Court of the United States, in the case of *United States vs. Ohio Oil Company*, 234 U. S. 548, 58 L. Ed. 1459, decided a somewhat similar state of facts and applied thereto the federal pipe line laws pertaining to common carriers.

The federal law is not broader than our State laws and does not give to the federal government or to the Interstate Commerce Commission greater powers than is given to our state government and our Corporation Commission.

The Standard Oil Company, through its subordinates, was engaged in the business of transporting oil from the oil fields in the central and western portion of the United States to its refineries in the east. The oil which it transported was generally purchased by it in competition with other bidders. It had a monopoly on the transportation business. The question then was, whether or not it was a common carrier and could be required to carry oil for other persons. The Court said in part:

(659 Supra “* * * Availing itself of its monopoly of the means of transportation the Standard Oil Company refused, through its subordinates, to carry any oil unless the same was sold to it or them, and through them to it, on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them, and carried across half the continent a great subject of international commerce coming from many owners, but by the duress of which the Standard Oil Company was master, carrying it all as its own.”

* * * * *

“The only matter requiring much consideration is the constitutionality of the act.

* * * * *

110 “The control of Congress over commerce among the states cannot be made a means of exercising powers not instructed to it by the Constitution, but it may require those who are common carriers in substance to become so in form. So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the

objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we have already intimated, those lines that we are considering are common carriers now in everything but name. They carry everybody's oil to a market although they compel outsiders to sell it before taking it into their pipes. The answer to their objection is not that they may give up the business, but that, as applied to them, the statute practically means no more than they must give up requiring a sale to themselves before carrying the oil that they now receive. The whole case is that the appellee, if they carry, must do it in a way that they do not like. There is no taking and it does not become necessary to consider how far Congress could subject them to pecuniary loss without compensation in order to accomplish the end in view." (Citing cases.)

Defendant, the Pierce Oil Corporation, contends that the part of the decision pertaining to the Uncle Sam Oil Company applies to it. The Court herein says:

(562 Supra) "There remains to be considered only the Uncle Sam Oil Company. This Company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery, for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end."

Mr. Justice Holmes delivered the opinion of the Court. The Chief Justice in a concurring opinion, speaking of the Uncle Same Oil Company, said:

(563 Supra) "The view which leads the court to exclude it is that the Company was not engaged in transportation under the statute,—a conclusion to which I do not assent. The facts are these: That company owns wells in one state from which it has pipe lines to its refinery in another state, and pumps its own oil through such pipe lines to its refinery; and the product, of course, when reduced at the refinery, passes into the markets of consumption. It seems to me that the business thus carried on is transportation in interstate commerce within the statute. But despite this I think the company is not embraced by the statute because it would be impossible to make the statute applicable to it without violating the due process clause of the 5th Amendment, since to apply it would necessarily amount to a taking of the property of the company without compensation. It is shown beyond question that the company buys no oil, and by the methods which have been mentioned simply carries its own product to its own refinery; in other words, it is engaged in a purely

111 private business. Under these conditions in my opinion there is no power under the Constitution without the exercise of the right of eminent domain to convert without its consent the private business of the company into a public one."

Just how the defendant, the Pierce Oil Corporation, can bring itself within the facts applicable to the Uncle Sam Oil Company is not clear to the Commission. This corporation appears to be just the same kind of business that the Ohio Oil Company was engaged in, viz., the buying of oil in the open market and transporting through its pipe line, which pipe line, the Commission finds, has a monopoly of the oil carrying business between the Cushing field and Sand Springs.

The fact that this corporation was granted exemption by the Commission from the provisions of Ch. 53, Art. 2, Revised Laws, 1901, is not material in the determination of this case, for the reason that such grant by the Commission was a conditional exemption and was made subject to revocation. If the facts are that the Pierce Oil Corporation's line is a common carrier and that the business of this line is of such a nature that the public needs the use of the same, and the conduct of the same is a matter of public consequences, there can be no exemption from the operation of the law referred to.

This further fact should be stated. The capacity of the refinery of the Pierce Oil Corporation at Sand Springs is considerably in excess of the capacity of the pipe line to the Cushing Field, but there is no evidence in the record that this line was ever used to its capacity by the Pierce Oil Corporation, or that it is ever needed to transport enough of its own oil to take up anything like the entire capacity of the line. This fact, however, is not considered by the Commission as material in determining the case.

The Commission finds that the defendant, the Pierce Oil Corporation, should carry the oil offered by complainant from its producing wells, which wells are shown to be now producing in the neighborhood of thirty (30) barrels per day, and such other oil as complainant may have to offer for transportation, so long as space in defendants' line is available.

The Commission is not called upon to determine, under the facts proven herein, whether or not the defendant, the Pierce Oil Corporation, should pro-rate space in its line with shippers of oil. The facts are, that the Pierce Oil Corporation has available space in its line for the transportation of other oil than its own and can transport such oil without inconvenience to itself, the only disadvantage it is now to being that it may suffer competition in the matter of bidding on the oil it gets to transport.

Wherefore, the premises considered and the Commission being advised, it is, therefore, ordered that the defendant, the Pierce Oil Corporation, shall transport for the complainant, the Phoenix Refining Company, such oil as the Phoenix Refining Company is now producing from its own wells in the Cushing field, and such other oil as defendant may have available space to transport, through

ne from the Cushing field, in Creek County, Oklahoma, to Sand
springs, Oklahoma.

The Commission will not determine the price at which such oil
shall be transported, as this is not a rate case and there are not suffi-
cient facts in the record to determine what rates would be reason-
able.

Furthermore, there has been no question raised as to the
amount which should be paid for such services.

Done at Oklahoma City, Oklahoma, this the 7th day of Decem-
ber, 1918.

CORPORATION COMMISSION OF
OKLAHOMA.

W. D. HUMPHREY,

Chairman.

CAMPBELL RUSSELL,

Commissioner.

ART. L. WALKER,

Commissioner.

Attest:

[SEAL.] J. H. HYDE,
Secretary.

And thereafterwards on the 10th day of December, 1918,
a motion for new trial was duly filed in said cause, which
said motion is in words and figures as follows:

Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHOENIX REFINING COMPANY, a Corporation, Complainant,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Motion for New Trial.

Comes now Pierce Oil Corporation, one of the defendants above
named, and moves the Corporation Commission to vacate, set aside
and hold for naught its order of December 7th, 1918, requiring this
defendant to transport oil for complainant, and to grant this de-
fendant a new trial herein, on the following grounds:

First. That the decision and order were not sustained by suffi-
cient evidence.

Second. That the decision and order were contrary to law.

Third. That the decision and order were contrary to the law and
the evidence.

Fourth. For errors of law occurring at the trial and excepted by this defendant, being errors in overruling this defendant's objections to evidence offered by the complainant and errors in sustaining the complainant's objections to evidence offered by this defendant.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for said Defendant.

File Mark: Corporation Commission of Oklahoma. Received December 10, 1918.

115 And, thereafterwards on the 17th day of December, 1918, said motion for new trial came duly on for hearing and was overruled, to which the defendants excepted, notice of appeal to the Supreme Court being given and sixty (60) days being given to the complainant to prepare Case-made for appeal to the Supreme Court, and the complainant to have fifteen (15) days in which to suggest and serve amendments and said Case-made to be settled and signed on five (5) days' notice, all of which proceedings were incorporated in Journal Entry filed, entered and recorded in said cause, which Journal Entry setting forth said proceedings is in words and figures as follows:

116 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHENIX REFINING COMPANY, a Corporation, Complainant,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Journal Entry.

Now on this 17th day of December, 1918, the above entitled matter coming on for hearing on the motion of the defendant Pierce Oil Company to vacate, set aside and hold for naught the above order and to grant it a new trial herein, after hearing the argument and being fully advised in the premises, it is ordered that said motion be, and it hereby is overruled, to which said defendant excepts.

And thereupon, for good cause shown, said defendant is granted sixty days from this date in which to prepare a case made for appeal to the Supreme Court and serve the same, the complainant to have fifteen days thereafterwards in which to suggest and serve amendments thereto, said case made to be settled and signed up on five days' notice from either side.

And said defendant in open court gives notice of its intention to appeal to the Supreme Court of the State of Oklahoma from the decision and order No. 1522, requiring it to transport oil for the complainant, and from the order overruling its motion for a new trial herein, and requests that its notice of appeal be entered in the trial docket and it is so ordered.

Done at Oklahoma City, Oklahoma, the day and date first above mentioned.

CORPORATION COMMISSION OF
OKLAHOMA.

W. D. HUMPHREY,

Chairman.

CAMPBELL RUSSELL,

Commissioner.

ART L. WALKER,

Commissioner.

[SEAL.] J. S. GRAW,

Acting Secretary.

File Mark: Corporation Commission of Okla., Received Dec. 17, 1918.

17 And the said notice of appeal referred to in the preceeding order was filed on said date in said cause and entered on the trial docket and is in words and figures as follows:

18 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHENIX REFINING COMPANY, a Corporation, Complainant,

VS.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Notice of Appeal.

Comes now Pierce Oil Corporation, one of the defendants above named, and files this, its notice of intention to appeal to the Supreme Court of Oklahoma from Order No. 1522 of the Corporation Commission rendered herein on the 7th day of December, 1918, requiring this defendant to transport oil for the complainant, and from the order this day made and entered overruling this defendant's motion for a new trial herein; and requests that this notice be entered on the trial docket of the Corporation Commission.

Dated this 17th day of December, 1918.

RICE & LYONS,

BOYLE & PRIEST,

Attorneys for said Defendant.

File Mark: Corporation Commission of Okla., Received Dec. 17, 1918.

119 And on said December 17, 1918, there was filed in said cause an application for supersedeas, which application is in words and figures as follows:

120 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHOENIX REFINING COMPANY, a Corporation, Complain-t.

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Application for Supersedeas.

Comes now Pierce Oil Corporation, one of the defendants above named, and respectfully requests the Corporation Commission to fix the date and the amount of a suspending or supersedeas bond to suspend the operation of Order No. 1522 of the Commission made herein on the 7th day of December, 1918, pending disposition of the appeal therefrom by the Supreme Court of Oklahoma.

RICE & LYONS,

BOYLE & PRIEST,

Attorneys for said Defendant.

File Mark: Corporation Commission of Okla., Received Dec. 17, 1918.

121 And on the 11th day of December, 1918, there was filed and entered and recorded in said cause, a copy of a Journal Entry of an order that day made and entered in Cause 3252 reversing the order of exemption made in said cause 3252, which said order of December 11, 1918, and the said copy thereof are each in words and figures as follows:

122 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Journal Entry.

Be it remembered that on this the 11th day of December, 1918, there came on for consideration the matter of Journal Entry herein.

fore made exempting the Pierce Oil Corporation and C. A. Pierce from Article 2, Chapter 53, Sections 4304-4318, Revised Laws of Oklahoma, 1910; Sections 563-578, Corporation Commission Laws, 1917. (Journal Entry of February 7, 1918, herein).

The Commission, on the 7th day of December, 1918, on complaint of the Phoenix Refining Company vs. the Pierce Oil Corporation and Clay Arthur Pierce, Cause No. 3278, Order No. 1522, ordered the Pierce Oil Corporation to transport oil for the Phoenix Refining Company, through its pipe line, the pipe line in question herein, from the Cushing Field, Oklahoma, to Sand Springs, Oklahoma.

The exemption heretofore granted the Pierce Oil Corporation and C. Arthur Pierce from the application of the laws above cited, for the said pipe line from the Cushing Field, Oklahoma, to Sand Springs, Oklahoma, was made on ex parte hearing and subject to modification or revocation. Said order of December 7, 1918, Order No. 1522, Cause No. 3278, in effect revokes the exemption heretofore granted by the Journal Entry made herein, on February 7, 1918, and the Commission having found that the nature and extent of the business of the said pipe line is such that it cannot be said that the public needs no use in the same and the conduct of the same is not a matter of public consequence;

It is, therefore, ordered that said Journal Entry of February 7, 1918, heretofore issued herein, be set aside and held for naught.

It is further ordered that a copy of this Journal Entry be filed in Cause No. 3278 and made a part of the record thereof.

Done at Oklahoma City, Oklahoma, the day and date first above mentioned.

[SEAL.]

CORPORATION COMMISSION OF
OKLAHOMA.

W. D. HUMPHREY,

Chairman.

CAMPBELL RUSSELL,

Commissioner.

ART L. WALKER,

Commissioner.

Attest:

J. S. GRAW,

Acting Secretary.

123 And on the 14th day of February, 1919, there was filed in the office of the Corporation Commission an application to certify the record in said cause for appeal to the Supreme Court of the State of Oklahoma, which application is in words and figures as follows:

124 Before the Corporation Commission of Oklahoma.

Cause No. 3278.

Order No. 1522.

PHOENIX REFINING COMPANY, a Corporation, Complainant,
vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Application to Certify Facts and Record to the Supreme Court.

To the Honorable Chairman of the Corporation Commission of Oklahoma:

Comes now the defendants and respectfully represent and show

That on the 7th day of December, 1918, there was entered here order number 1522 requiring the defendants to transport oil as prayed in the complainant's complaint and that on the 17th day of December, 1918, an order was entered overruling the defendant's motion for new trial; that defendants desire to appeal from said orders to the Supreme Court of Oklahoma as provided by law and therefore respectfully request that the Chairman of this Commission certify to the Supreme Court of this State, under seal of the Commission all of the facts upon which said orders were based, together with all evidence introduced before or considered by the Commission in the hearing of this cause and in the making of said orders, including written statement of the reasons upon which the action of the Commission in making said orders is based, together with copy of said orders, copy of the petition of complaint, copy of the answer of defendants, copy of the motion for new trial, copy of the notice of appeal and all other matters of record in said cause.

Dated this 13th day of February, 1919.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for Defendants

125 And afterwards, on the 14th day of February, 1919, there was made, filed, entered and recorded in said cause an order obviating the necessity of making separate records and filing separate appeals in cause 3278 and in cause 3252, and consolidating said causes for the purpose of appeal and ordering that all papers thereafter filed in connection with the appeal be entitled and filed in cause 3278, which said order was in words and figures as follows:

Before the Corporation Commission of Oklahoma.

Cause 3278.

PHOENIX REFINING COMPANY, a Corporation, Complainant,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

and

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Order.

Now on this 14th day of February, 1919, it appearing that the above entitled causes are interrelated in that they involve the same question and the order vacating ex parte exemption made in Cause No. 3252 was made on the record in Cause 3278.

It is ordered to avoid the expense of double appeal that one record for appeal be made covering both causes and that said causes be and they hereby are for the purpose of appeal to the Supreme Court of Oklahoma, consolidated, and it is further ordered that all papers hereafter filed in connection with said appeal and all further proceedings had in connection with said appeal before the Commission be entitled and filed in Cause No. 3278.

Done in open court at Oklahoma City, Oklahoma the day and year first above written.

W. D. HUMPHREY,
(Chairman.)

CAMPBELL RUSSELL,
(Commissioner.)

ART L. WALKER,
(Commissioner.)

Attest:

[SEAL.] J. S. GRAW,
Secretary.

The foregoing is a full, true, correct and complete copy and transcript of all pleadings, motions, orders, evidence, findings, proceedings and judgment in said cause No. 3278, including all of the orders and rulings made, all exceptions allowed, all evidence offered or introduced and all the record from which the judgment and journal entry in said cause were made.

128

Before the Corporation Commission of Oklahoma,

No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHOENIX REFINING COMPANY, a Corporation, Complainant,

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Record in Cause 3252.

In the above entitled cause, being Cause No. 3252, entitled "Before the Corporation Commission of Oklahoma, in re application of the Pierce Oil Corporation and Clay Arthur Pierce to be exempted from the jurisdiction of the Corporation Commission", there was filed before said Commission an application for exemption on which on the 7th day of February, 1918, an order of exemption was made, filed, entered and recorded by said Corporation Commission and subsequent to which time in said cause, to-wit: on the 11th day of December, 1918, there was made, filed and entered and recorded by said Corporation Commission an order revoking said order of exemption of February 7, 1918, which application, order of exemption and order of revocation are in words and figures as the same are hereinbefore set forth in the record in cause number 3278, on pages 83 to 87 inclusive, and 103 respectively hereof, and are hereby referred to and made a part of this record of cause 3252 as fully and completely as though herein again recited specifically and in full.

129

There was no regular hearing had subsequent to the making of the order of February 7, 1918, said order having been made solely on the record in cause 3278 hereinbefore set forth and no other or further evidence considered, which said record is hereinbefore set forth fully and is herein incorporated as part of the record of cause 3252 and made a part thereof as fully and completely as though herein again recited at length.

130

And thereupon on December 14, 1918 there was filed in said cause No. 3252 a motion for new trial and to vacate, set aside and hold for naught the revocation order of December 11, 1918, which said motion for new trial is in words and figures as follows:

131 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Motion for New Trial.

Come now Pierce Oil Corporation, the applicants above named, and move the Corporation Commission to vacate, set aside and hold for naught its decision and order made herein December 11th, on the evidence introduced in cause No. 3278, revoking the exemption granted herein by Journal Entry of February 7th, 1918, and to grant these applicants a new trial herein, on the following grounds:

First. That said decision and order were not sustained by sufficient evidence.

Second. That the decision and order were contrary to the law.

Third. That the decision and order were contrary to the law and the evidence.

Fourth. For errors of law occurring at the trial and excepted to by these applicants, being errors in overruling these applicant's objections to evidence offered in said cause No. 3278 by the complainant, and errors in sustaining said complainant's objections to evidence offered therein by these applicants.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for said Applicants.

File mark: Corporation Commission of Okla. Received Dec. 14, 1918.

132 And thereupon on the 17th day of December, 1918, there was made, filed, entered and recorded in said cause an order overruling said motion for new trial and to vacate and set aside and hold for naught said vacation order of December 11, 1918, and an order granting 60 days in which to make and serve case made, time for the suggestion of amendments and fixing the time for notice of settlement of case made and ordering that the applicant's notice of appeal be entered on the trial docket, which said order was in words and figures as follows:

133 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE
be Exempted from the Jurisdiction of the Corporation Commission.

Journal Entry.

Now on this 17th day of December, 1918, the above entitled matter coming on for hearing on the motion of the applicants to vacate, set aside and hold for naught the order made and entered December 11th, 1918, revoking the exemption granted by Journal Entry of February 7th, 1918, and to grant them a new trial herein, after hearing the argument and being fully advised in the premises, the court holds that the record in Cause No. 3278 justifies said order and it is ordered that said motion be, and it hereby is, overruled, which said applicants except.

And thereupon, for good cause shown, said applicants are granted sixty days from this date in which to make and serve a case made for appeal to the Supreme Court, fifteen days thereafterwards a case made in which to suggest and serve amendments thereto, and a case made to be settled and served on five days' notice.

And said applicants in open court give notice of intention to appeal to the Supreme Court of the State of Oklahoma from said order of December 11th, 1918, and from the order this day made overruling the motion for a new trial therein, and request that notice of appeal be entered in the trial docket, and it is so ordered.

Done at Oklahoma City, Oklahoma, the day and date first above mentioned.

[SEAL.]

CORPORATION COMMISSION OF
OKLAHOMA.

W. D. HUMPHREY,

Chairman.

CAMPBELL RUSSELL,

Commissioner.

ART L. WALKER,

Commissioner.

Attest:

J. S. GRAW,

Acting Secretary.

File Mark: Corporation Commission of Okla., Received Dec. 1918.

134 And thereupon on said 17th day of December, 1918, at the time of the overruling of the motion for new trial and giving of notice of appeal in open court there was filed and entered on the trial docket a written notice of appeal mentioned in said order, which said notice of appeal was in words and figures as follows:

35 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Notice of Appeal.

Come now Pierce Oil Corporation and C. A. Pierce, the applicants above named, and file this, their notice of intention to appeal to the Supreme Court of Oklahoma from the order made and entered herein on December 11th, 1918, revoking the exemption heretofore granted by Journal Entry of February 7th, 1918, and from the order this day made and entered in said matter overruling their motion for a new trial herein; and request that this notice be entered on the trial docket of the Corporation Commission.

Dated this 17th day of December, 1918.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for Applicants.

File Mark: Corporation Commission of Okla. Received Dec. 17, 1918.

36 And on said December 17, 1918 there was filed in said cause an application for supersedeas, which application is in words and figures as follows:

137 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE to be Exempted from the Jurisdiction of the Corporation Commission.

Application for Supersedeas.

Come now Pierce Oil Corporation and C. A. Pierce, the applicants above named, and respectfully request the Corporation Commission to fix the date and the amount of a suspending or supersedeas bond to suspend the operation of the order of December 11th, 1918, revoking the exemption granted these applicants by journal entry of February 7th, 1918, pending disposition of the appeal therefrom by the Supreme Court of Oklahoma.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for said Applicants.

File Mark: Corporation Commission of Oklahoma. Received
Dec. 17, 1918.

138 And thereupon on the 14th day of February, 1919, the
was filed in the office of the Corporation Commission an application to certify the record in said cause for appeal to the Supreme Court of the State of Oklahoma, which application is in words and figures as follows:

139 Before the Corporation Commission of Oklahoma.

Cause No. 3252.

In re Application of PIERCE OIL CORPORATION and C. A. PIERCE
to be Exempted from the Jurisdiction of the Corporation Commission.

Application to Certify Facts and Record to the Supreme Court

To the Honorable Chairman of the Corporation Commission
Oklahoma:

Come now the above named applicants and respectfully represent and show that on the 11th day of December, 1918, there was entered herein an order vacating a prior order of exemption of February 7, 1918, exempting the pipe line of these applicants from jurisdiction of the Corporation Commission; that defendants desire to appeal from said order to the Supreme Court of Oklahoma as provided by law and therefore respectfully request that the Chairman of the Corporation certify to the Supreme Court of this State, under seal of the Commission and transmit to the Clerk of said Court to be filed with the record in this case all of the facts upon which said order is based, together with all evidence introduced before or considered by the Commission on the hearing of this cause and in the making of said order, including a written statement of the reasons upon which the action of the Commission in making said order is based, together with copy of said order, a copy of the application for exemption, a copy of the order of exemption, a copy of the motion for reversal and of the order overruling same, and of the notice of appeal and all other matters of record in said cause.

Dated this 13th day of February, 1919.

RICE & LYONS,
BOYLE & PRIEST,
Attorneys for Applicants

140 And thereafterwards, on the 14th day of February, 1919, there was made, filed, entered and recorded in said cause an order obviating the necessity of making separate records and filing separate appeals in cause 3278 and in cause 3252, and consolidating said causes for the purpose of appeal and ordering that all papers thereafter filed in connection with the appeal be entitled and filed

in cause 3278, which said order was in words and figures as hereinbefore set forth in the record herein in cause 3278 which is hereby referred to and fully incorporated herein by reference thereto.

141 The foregoing is a full, true, correct and complete copy and transcript of all the pleadings, motions, orders, evidence, findings, proceedings and judgment in said cause 3252, including all of the orders and rulings made, or exceptions allowed, and constitutes the entire record thereof, and all the evidence considered in said cause was the record in cause No. 3278 hereinbefore incorporated by reference.

142 The foregoing is a full, true, correct and complete copy and transcript of all pleadings, motions, orders, evidence, findings and proceedings and judgment in said cause No. 3278 and in said cause No. 3252, including all of the orders and rulings made, all exceptions allowed, all evidence offered or introduced and all the record from which the judgment and journal entry in each and both of said causes were made, and is a full, true, correct and complete case made in said causes.

PIERCE OIL CORPORATION,
A CORPORATION,
CLAY ARTHUR PIERCE,
By RICE & LYONS,
BOYLE & PRIEST,
Their Attorneys.

143 Before the Corporation Commission of Oklahoma.

No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHOENIX REFINING COMPANY, a Corporation, Complainant,
vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Acceptance of Service.

We, the undersigned attorneys of record for the Complainant and attorney of record for the Commission in the above entitled causes do hereby certify that the foregoing case made was duly served on us on the 14th day of February, 1919.

STUART CRUCE & CRUCE,
Attorneys for Complainant.
W. D. HUMPHREY,
Chairman Corporation Commission.

144 Before the Corporation Commission of Oklahoma.

No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHOENIX REFINING COMPANY, a Corporation, Complainant

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendant

Stipulation of Attorneys.

It is hereby stipulated and agreed by and between the parties hereto that the foregoing case made contains a full, true, correct and complete copy and transcript of all the proceedings in said causes including all pleadings filed and proceedings had, all the evidence offered and introduced, all the orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said causes were made; and Complainant and Corporation Commission by their attorneys waive the right to suggest amendments and consent that the same may be settled immediately without notice and hereby join in the request of the defendants that the same be settled and ordered filed with the Secretary of the Corporation Commission according to law.

STUART CRUCE & RIDDLE,
Attorneys for Complainant
W. D. HUMPHREY,
Chairman Corporation Commission

145 Before the Corporation Commission of Oklahoma.

No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHOENIX REFINING COMPANY, a Corporation, Complainant

vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendant

Notice of Settlement of Case-made.

To the Attorneys for Complainants and the Attorney for the Corporation Commission of Oklahoma:

You are hereby notified that on the — day of —, 1919, at — o'clock, — M., or as soon thereafter as counsel can be heard, the case made in said causes will be presented to the Honorable Corporation

Commission at the office of the Chairman thereof at the State Capitol at Oklahoma City, Oklahoma, for settlement.

PIERCE OIL CORPORATION AND
CLAY ARTHUR PIERCE,
Defendants,

By _____,
_____,
Their Attorneys.

146 Before the Corporation Commission of Oklahoma.

No. 3278.

(Cause No. 3252 Consolidated Therewith.)

PHENIX REFINING COMPANY, a Corporation, Complainant,
vs.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Defendants.

Certification of Case-made.

The undersigned, the Corporation Commission of Oklahoma, hereby certify that the foregoing was presented on the 9th day of April 1919 to said Commission as a case made in the above causes; that at the time of the presentation of said case made for settlement and signing there appeared Mr. Moore of West, Sherman, Davidson and Moore, for the defendant and there was no appearances for the Complainant or for the Corporation Commission, but waiver of notice of the presentation of said case made and signing and settling was duly signed by the attorneys for the Complainant and by the attorney for the Corporation Commission, they joining in the request that the case made as served be settled and signed and said case made is now settled and signed as a true and correct case made in each and both of said causes and it is ordered that it be attested and filed by the Secretary of the Corporation Commission in Cause No. 3278 as required by the Consolidated Order.

Witness our hands at the office of said Corporation Commission in Oklahoma City, Oklahoma, the day and year first above written.

CORPORATION COMMISSION OF
OKLAHOMA,

[SEAL.]

W. D. HUMPHREY,

(Chairman.)

CAMPBELL RUSSELL,

(Commissioner.)

_____,
(Commissioner.)

Attest:

P. E. GLENN,

Secretary.

147 *Certification of Record on Appeal to the Supreme Court.*

STATE OF OKLAHOMA,

County of Oklahoma, ss:

I, W. D. Humphrey, Chairman of the Corporation Commission of Oklahoma, do hereby certify that the above and foregoing is a true, correct and complete transcript of the record made before said Commission in cause No. 3278, in which order No. 1522 was promulgated and an order was made and entered overruling a motion for a new trial therein, and also in cause No. 3252 in which an order was made and entered vacating a prior order of exemption and an order was made and entered overruling a motion for a new trial therein; and I further certify that the said record contains all of the pleadings, evidence taken and introduced, offered or considered by the Commission and objections thereto, all motions, excepting rulings and orders of the Commission made in said causes and each of them, and all facts upon which said orders and each of them were based, together with written statements of the reasons upon which said orders were based, and that the same is a full, true, correct and complete transcript of the record in said causes and in each of them and in said causes as consolidated causes.

Given under my hand and the seal of the Corporation Commission of the State of Oklahoma this 9th day of April, 1919.

W. D. HUMPHREY,
Chairman

Attest:

[SEAL.] P. E. GLENN,
Secretary.

148 Endorsed on back thereof in words and figures as follows: #10,550. Before the Corporation Commission Court, No. 3278. (Cause No. 3252 Consolidated Therewith.) Phoenix Refining Company, a Corporation, Complainant, vs. Pierce Oil Corporation and Clay Arthur Pierce, Defendant. Case-made and Certified Record Filed in Supreme Court of Oklahoma Apr. 9, 1919. William B. Franklin, Clerk. Rice & Lyons, lawyers, Tulsa, Okla., Attorneys for Defendants.

149 And thereafter, to-wit: on this 23rd day of October, 1919, in the Supreme Court of Oklahoma, the following proceedings were had, in said cause:

Supreme Court, October Term, 1919, October 23rd, 1919, Seventh Judicial Day.

10550.

PIERCE OIL CORPORATION et al., Plaintiffs in Error,

vs.

PHOENIX REFINING Co. et al., Defendants in Error,

And now on this day the above cause is argued orally in behalf of defendant in error and submitted on the record, briefs and oral argument.

150 And thereafter, to-wit: on the 25th day of May, 1920, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, April Term, 1920, May 25th, 1920, Tenth Judicial Day.

10550.

PIERCE OIL CORPORATION et al., Plaintiffs in Error,

vs.

PHOENIX REFINING Co. et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the orders of the Corporation Commission in the above cause should be affirmed. It is therefore ordered and adjudged by the court that the orders of the Corporation Commission in the above cause be, and the same are hereby affirmed.

Opinion by McNeill, J.

Rainey, C. J., Harrison, Johnson and Bailey, JJ., concur.

161 And thereafter, to-wit: on the 25th day of May, 1920, the Court filed its opinion in said cause, which said opinion is in words and figures as follows:

Filed in Supreme Court of Oklahoma, May 25, 1920. William M. Franklin, Clerk.

152 In the Supreme Court of the State of Oklahoma.

10550.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Plaintiffs in Error,

vs.

PHOENIX REFINING COMPANY and STATE OF OKLAHOMA, Defendants in Error.

Syllabus.

1. A finding by the Corporation Commission that a pipe line extending between two points within the State, has been transporting oil for hire, and is a common carrier within the meaning of Section 4309 Revised Laws 1910, will not be disturbed on appeal to this court when there is evidence reasonably tending to support such finding.
2. A pipe line company which has built, and constructed its pipe line since the passage of Article II Chapter 53 (Sec. 4304 to 4318 Revised Laws 1910), or those that have acquired pipe lines since said time, and have thereby received the benefits of said law, cannot contend that Section 4309 of said law which makes said pipe lines a common carrier, is in violation of the Fifth and Fourteenth amendments of the Constitution of the United States and the Constitution of Oklahoma, in that it amounts to the taking of property without due process of law.

Appeal from the Order of the Corporation Commission of the State of Oklahoma.

Affirmed.

Boyle & Priest, West, Sherman, Davidson & Moore, for Plaintiffs in Error.

Stuart, Cruce & Cruce, for Defendant in Error.

Opinion by McNeill, J.

153 This action was commenced before the Corporation Commission by the Phoenix Refining Company against the Pierce Oil Corporation, and Clay Arthur Pierce. The complaint alleged that the Phoenix Refining Company was a corporation operating a refinery at Sand Springs, Oklahoma, and owned certain oil leases in the Cushing Oil fields which were producing oil. That the Pierce Oil Corporation was the owner of a pipe line extending from the Cushing oil fields to Sand Springs, and for several years had been transporting the oil of the complainant from the Cushing oil fields to Sand Springs, and had transported the oil for various other parties for

hire and that the company in the operation of its pipe line was a common carrier and subject to the rules and orders of the Corporation Commission. The petition further alleged that complainant had entered into certain contracts with the defendant for transportation of its oil each year, but the defendant had notified plaintiff that it would no longer carry oil for the complainant, and it was further alleged that there was no other pipe line connecting the Cushing oil fields to Sand Springs whereby the complainant could have adequate service for transporting its oil to its own refinery. The complainant prayed for the Corporation Commission to make an order compelling the defendant to continue to transport the oil of the complainant.

The defendants answered admitting it was a corporation and alleged the complaint did not state facts sufficient to constitute a cause of action. It admitted the company was engaged in the refining business, but denied that in operating its pipe line, it was a common carrier or ever had been, and was not subject to the orders of the Corporation Commission, and pleaded their line running from the Cushing fields to Sand Springs was constructed to carry its own oil to its own refinery, and it alleged that it had increased its refinery at Sand Springs, and it would be necessary to utilize all of its space in the pipe line to carry its own oil. It also alleged that it
154 had been exempted from being a common carrier by the Corporation Commission, and further pleaded that the only oil that it had ever transported was simply as an accommodation, and there were other common carrier lines from which the complainant could receive adequate service.

Upon hearing before the Corporation Commission, the Corporation Commission ordered the defendant Pierce Oil Corporation to carry oil offered to it by the Phoenix Refining Company from the producing wells of the Phoenix Refining Company, which wells were producing about thirty barrels per day, to the refinery of the Phoenix Refining Company located at Sand Springs and to carry such other oil as the Phoenix Refining Company may have to offer so long as space in the line was available.

The second order appealed from was the order setting aside a previous order of the Corporation Commission whereby the Corporation Commission had exempted the Pierce Oil Corporation and Clay Arthur Pierce pipe line extending from the Cushing fields to Sand Springs from being a common carrier as provided in Section 4308 Revised Laws 1910.

To reverse the orders of the Corporation Commission, the Pierce Oil Corporation and Clay Arthur Pierce have appealed to this court and rely upon two propositions:

The first question presented goes to the sufficiency of the evidence to support the finding of the Corporation Commission that the pipe line of the Pierce Oil Corporation and Clay Arthur Pierce was a common carrier and subject to the rules and orders of the Corporation Commission.

In considering this question the finding of fact of the Corporation Commission must be considered in the light of the former opinions

of this court wherein this court has held that the finding of fact by the Corporation Commission will not be reversed on appeal if there is any evidence reasonably tending to support its finding.

155 Such was the holding in *Ft. Smith & W. Ry. Co. vs. State*, Okla. 866; 108 Pac. 407; and *A. T. & S. F. Ry. vs. State*, Okla. 237, 148 Pac. 144. Section 4309 Revised Laws 1910 defines what oil pipe lines are common carriers. Section 4308 R. L. 1910 provides what companies may be exempt from the orders of the Corporation Commission.

An examination of the record discloses that there was evidence that the Pierce Oil Corporation and Clay Arthur Pierce had been carrying oil of the Phoenix Refining Company for some four or five years under contract for a fixed rate. There was evidence that they had also carried oil for the Constantin Refining Company, and it was stated by one of the witnesses for the Company that they had contracted from year to year with various refineries and had carried oil for those refineries located at Sand Springs and a few at Tulsa. While the Pierce Oil Corporation and Clay Arthur Pierce contended they had carried oil other than their own, in doing so, the charges were nominal and they were transporting the oil more as an accommodation for the other refineries than for the purpose of profit, and that the line was built and constructed not for the purpose of being a common carrier but simply to supply their own refinery. We think the evidence such as heretofore stated, was sufficient to support the finding of the Corporation Commission that the pipe line of the Pierce Oil Corporation and Clay Arthur Pierce was a common carrier as defined by Section 4309 Revised Laws 1910, and therefore subject to the rules and regulations of the Corporation Commission, therefore this finding will not be disturbed by this court on appeal.

The Corporation Commission further found that the plaintiffs in error were not utilizing the full capacity of their pipe line and that the pipe line could take care of the oil offered or tendered to it for transportation by the complainant. There was also sufficient

156 evidence to support this finding. The order of the Corporation Commission only requires the Pierce Oil Corporation and Clay Arthur Pierce to receive and transport the oil offered so long as there was space available in their pipe line.

The next question presented by the plaintiffs in error is stated as follows:

"That such a construction of the statutes as would make the Pierce Oil Corporation a common carrier and amenable to the jurisdiction of the Corporation Commission, under the conceded facts, would render such legislation invalid and in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and also in violation of the Constitution of Oklahoma."

We do not believe that plaintiffs in error are in a position to test the constitutionality of the statute, which makes the pipe line a common carrier of oil for the reason the record discloses that the statute

which gave to pipe line companies the right of eminent domain and the right to build said line upon and across the highways was an act dealing exclusively with oil pipe line, was passed by the Legislature and became effective in 1909. The plaintiff's in error pipe line was not built or constructed until 1913. This court in the case of Noble State Bank vs. Haskell 22 Okla. 48, 97 Pac. 590, on page 74 of 22 Okla. stated:

"It is doubtless true that such a law could be enforced as to banks chartered after its passage, because then it would be optional with the persons desiring to organize a bank to incorporate or not, as they liked. If they chose to avail themselves of the law, they could not then object to it, but as to banks already in existence, that have no choice in the matter, the law does not operate upon them by their consent but purports to compel them to act under its provisions."

The Supreme Court of the United States in passing upon the constitutionality of similar legislation wherein the law was being attacked as unconstitutional by pipe line companies built and constructed prior to the passage of the law and those constructed or acquired after the passage of the law. In the case of The Pipe Line Cases 234 U. S. 540 on page 531 the court stated:

157 "So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established, there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation."

The Supreme Court of California in the case of the Associated Pipe Line Company vs. R. R. Commission of California 169 Pac. 62 wherein the same question was involved, the law being attacked by pipe line companies constructed prior to the passage of the legislation and those built or constructed after the legislation, the court stated as follows:

"Subdivision (d) of Section 1 and section 2 of the act are, except perhaps as to corporations acquiring such pipe lines after the passage thereof, unconstitutional and in violation of the Fourteenth Amendment to the federal Constitution, in that they contemplate the taking of private property in the absence of any provision made for compensating the owners, and without due process of law.

While it is true plaintiffs in error contend that they did not exercise the right of eminent domain in building the pipe line in question, but purchased all of their right of way. While this may be true as to the land owned by individuals but there are other rights granted to said company by virtue of Section 4305 Revised Laws 1910 relating to the highways and rights under and by virtue of other sections of the statute that they have received the benefit therefrom.

By applying the same rule to the facts in the case at bar, the Pierce Oil Corporation and Clay Arthur Pierce having built and constructed their pipe line after the passage of the Legislation which dealt exclu-

sive with the subject of oil pipe lines and declared that certain line were common carriers, the company having built and constructed its line in accordance with the provisions of said law and having received any and all benefits that might be derived from said law, can not now contend that one section of the same to-wit: 4309 which

158 makes said line a common carrier is in violation of the fifth and fourteenth amendment to the constitution of the United

States nor the constitution of the State of Oklahoma in that it amounted to the taking of property without due process of law. The determination of this question also settles the question as to the error committed by the corporation commission in setting aside its previous order exempting the Pierce Oil Corporation and Clay Arthur Pierce from being a common carrier.

For the reasons stated, the orders of the Corporation Commission will be affirmed.

Rainey, C. J., Harrison, Johnson, and Bailey, JJ., concur.

159 And thereafter, on the 8th day of June, 1920, Plaintiffs in error filed their petition for rehearing in said cause, which said petition for rehearing is in words and figures as follows:

160 Filed in Supreme Court of Oklahoma Jun. 8, 1920. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 10550.

PIERCE OIL CORPORATION and CLAY ARTHUR PIERCE, Plaintiffs in Error,

vs.

PHOENIX REFINING COMPANY, Defendant in Error.

Petition for Rehearing.

The plaintiffs in error respectfully petition the Court for a rehearing in the above entitled cause, and that the opinion of the Court rendered May 25, 1920, be recalled and vacated, and that said cause be re-considered, and a new opinion delivered therein, in conformity with the conclusions that may be reached after such rehearing. And for grounds of this petition, plaintiffs in error show:

First. That in the statement in the opinion that "the first question presented goes to the sufficiency of the evidence to support the finding of the Corporation Commission that the pipe line of the Pierce Oil Corporation and Clay Arthur Pierce was a common carrier," and in the further statement that the evidence "was sufficient to support the finding of the Corporation Commission that the pipeline of the Pierce Oil Corporation and Clay Arthur Pierce was a common carrier as defined by section 4309, Revised Laws of 1910," the Court misapprehends the question submitted for decision.

Whether or not Pierce Oil Corporation was a common carrier in respect to its pipeline from Cushing to its refinery in Sand Springs is a question of law under the admitted facts and decisions applicable hereto. To denominate the conclusion of the Corporation Commission in this respect as a finding of fact amounts to a practical denial of our remedy by appeal.

Second. The Court overlooked, or failed to give due consideration, to the following findings of fact by the Commission, to-wit: "The facts do not show that defendants have ever pretended that their line was a common carrier line or that they made a general business of carrying oil for the public," and "that the line in question was constructed for the primary purpose of carrying crude oil to its refinery at Sand Springs, Oklahoma; that the Pierce Oil Corporation never held itself out as a common carrier of oil."

Third. In determining whether the Pierce Oil Corporation should be declared a common carrier in fact, the Court either overlooked, or failed to consider the decisions cited on that point in our brief and the case of Producers Transportation Co. vs. Railroad Commission, 251 U. S. 228, decided January 5, 1920, and all of which, admitting the facts found by the Corporation Commission, conclusively show that the Pierce Oil Corporation was never in point of fact a common carrier in respect to the pipeline in controversy.

Fourth. The question whether the Pierce Oil Corporation is a common carrier by force and effect of section 4309, Revised Laws 1910, has not been passed on or determined by the Court, and which was the real question involved in the the controversy and presented on appeal.

Fifth. The holding of the Court that the plaintiffs in error were stopped from raising any constitutional question because section 4309 was enacted prior to the construction of their pipeline is, we respectfully submit, unsound and without judicial precedent.

Sixth. The finding and conclusion of the Court sustaining the order of the Corporation Commission requiring the plaintiffs in error to carry only such oil as they might have space for in their pipeline is justifiable only upon the theory that they are, by virtue of their own act and intention, a common carrier in fact, or upon the theory that the statute made them a common carrier, in point of law, regardless of their own acts and intention in the premises, neither of which questions, we respectfully submit, has been decided by the Court.

Briefly, in support of this petition for rehearing, we desire to call the Court's attention to the following. It is not disputed that our business is the refining of oil and the marketing of its refined products,—a private business. We are not engaged in the business of transporting oil, except as an incident to our private business of refining, our pipeline being exclusively a plant facility.

It is also a fact, found by the Corporation Commission, that

our pipeline was built for our own private use, and for carrying oil into our own refinery; that we have never dedicated it to public use; that we have never held ourselves out as a common carrier; that we have never pretended that our line was a common carrier, and that such oil as we carried for other persons was occasional, for convenience and accommodation, and a matter of private contract.

The finding of the Corporation Commission that "oil was also carried for hire for other persons through said line" refers to the oil carried for Phoenix Refining Company and which was owned in common by said company and Pierce Oil Corporation, and was carried under contract at a compensation not exceeding fifty per cent of the established toll, and only during the period of the contract, after which time the privilege was withdrawn.

The Corporation Commission based its order, not on the assumption that we were a common carrier in fact, but because a great quantity of oil run through the line was not being produced, but was purchased by us, and also because the public needed such use of that space in our pipeline as we did not use ourselves.

It was our contention that the Commission's decision, based on the foregoing findings, was wholly erroneous, and that its only justification could be that we were a common carrier, not in point of fact, but by virtue of section 4309 of the Revised Laws of 1910, and we further contended that this section had no application to us, and

that to construe it as applicable would render it unconstitutional and would result in the taking of our property without due process of law. The contention of Phoenix Refining

Company was that we were not in a position to raise the constitutional question, and it was claimed that this contention had support in the so-called Pipe Line Cases. In the oral argument the Pipe Line Cases and the controversy involved therein were discussed before a Division of the Court, including at least two of the present justices who did not join in the opinion.

The Pipe Line cases grew out of an order made in June 1912 by the Interstate Commerce Commission, requiring numerous pipeline companies, including Standard Oil Company and The Prairie Oil & Gas Company, to file with the Commission a schedule of their rates and charges for the transportation of oil. This order had been preceded by a hearing before the Commission, in which it appeared that these companies had entered into a combination under the control of the Standard Oil Company of New Jersey, which owns either all, or a great part of, the stock of the various companies, and had thus made itself master of the transportation of oil across the continent; that the combination carried everybody's oil to a market and was carrying all oil offered on one condition, however, that the offerer would sell at the price fixed by the combination. The companies instituted a suit in the Court of Commerce to enjoin the Commission from enforcing its order. Upon a hearing of the application the Court granted an injunction and an appeal was taken from that judgment to the Supreme Court of the United States.

The decision of the Court of Commerce was written by presiding

Judge Knapp, in a long opinion which will be found in 204 Fed. beginning at page 800. The legislation involved was an amendment to section 1 of the act regulating commerce, so as to
165 make it read as follows:

"That the provisions of this act shall apply to any corporation, or any person or persons engaged in the transportation of oil or other commodities, except water and except natural or artificial gas, by means of pipe lines or partly by pipe line and partly by railroad, or partly by pipe line and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this act."

The petitioners contend that the words "engaged in transportation" meant and were equivalent to "engaged in the business of transportation;" that they were not engaged in that business, but were transporting their own oil which they had purchased; that such business was a private business and that not being common carriers, the act did not apply to them, but that if the amendment applied literally to all persons and corporations using pipe lines for the transportation of oil, whether in a public or private way, then the amendment was unconstitutional, because it deprived such persons or corporations of their property without due process of law. The Government contended that it was the purpose and intention of Congress to make the amendment apply to every person transporting oil in interstate commerce, and to make private pipe lines common carriers, just as Phoenix Refining Company contends in the case at bar. The Court agreed with this contention, and then proceeded to discuss the question, "Does this amendment, construed in accordance with the Government's contention, which we uphold, exceed the constitutional power of Congress?" and concluded that it did exceed the constitutional power of Congress, and that therefore the enforcement of the Commission's order would amount to a taking of the petitioners' property for public use without
166 just compensation. It was from that decision that the Government appealed, the Government still insisting that Congress had a right to subject private pipelines to regulation by the Interstate Commerce Commission on the ground that such lines tended inevitably toward monopoly.

The decision of the Supreme Court of the United States rejected the whole reasoning of the Commerce Court. Its decision is founded on three propositions:

First, that the real business in which the petitioners were engaged was the transportation of oil;

Second, that they were common carriers in fact and in everything except form; and

Third, that the amendment was applicable to them and not unconstitutional, as it involved no taking of property, for the reason that it did not compel a different use of the lines than that to which the petitioners had already dedicated them, but that it required only that they must give up prescribing their own conditions to the con-

duct of the business of transportation, namely, by compelling a carrier of the oil to themselves before accepting it for transportation.

The court held that the companies were common carriers, therefore Congress had a right to prescribe the conditions on which they could conduct their business.

Judge Holmes, who wrote the majority opinion, in discussing the constitutional question, said:

"So far as the statute contemplates future pipelines and prescribes the conditions upon which they may be established, there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation."

167 It is this remark which was relied upon by counsel for the other side to support their proposition that we cannot raise the constitutional question because our line was established before the enactment of the statute. But the remark of Justice Holmes was not in answer to any contention of that kind. Nobody has urged that the power of Congress depended upon any such distinction. The petitioners, as stated, were contending that their real business was the purchase of oil and not its transportation, and that they were, therefore, not common carriers. To have contended that Congress could interfere with a private business by simply declaring it to be public, provided that it did so in advance, would have been to admit the constitutionality of the act, but denying its application to those whose private business existed before the act. This was not the position of petitioners, for they assailed the constitutionality of the act as construed by the Government in that case. Justice Holmes used the language quoted simply by way of illustrating the argument. Of course, it must be applied to the facts in that case as found by the court. He simply instanced a case where there could be no ground for disagreement, namely, that no pipeline serving the public, that is, a common carrier of oil by means of a pipe line, established before the amendment, could refuse to transport oil except upon a condition which it was the very purpose of the amendment to prohibit, as the court expressly held. Now, that could be done after the amendment, which nobody denied, that Congress had the power to prescribe the conditions, and therefore the act was constitutional. If so, it could not become unconstitutional as to existing pipe lines which were in exactly the same situation as pipelines established after the act was passed. Both

168 are common carriers, engaged in a business which was subject to congressional control. To say that the question whether a common carrier is subject to legislative control is to be determined by whether or not its business was established before or after the enactment of the legislation is to state a proposition that has no support in reason or authority. The right of public control exists in one case as well as the other, and of course in neither case is there any taking of property within the meaning of the constitution. So it is clear that the act applies only to those who are com-

mon carriers, engaged in the business of transportation of oil by means of pipe lines.

It was contended by counsel for Phoenix Refining Company that our construction of section 4309 Revised Laws of 1910, to wit, that it applies only to common carriers in fact, is unsound for the reason, as they state, that:

"If this were all that the legislation intended to require of the pipe line companies, then there would be no need for the passage of the act in question, and no useful purpose could be served by its passage, because it would only declare those pipe lines common carriers which were, under the common law, previous to its passage, actually common carriers, and, as to such lines, they could be made to carry everyone's oil anyhow."

And that, as we have contended, was the real question in the case. Counsel contended, as the Government did in the Pipe Line Cases, that the legislation was intended to make private pipe lines common carriers, and their reasoning is substantially the same, namely, that there could be no purpose in making pipe lines common carriers which already were common carriers without such legislation. The inevitable result of such reasoning was to hold, as the Commerce

169 Court did, that such a statute, so construed, was in excess of legislative authority and void. The Supreme Court of the

United States was careful not to place such a construction upon the amendment as would make it unconstitutional and held that it applied to the pipe line companies because "they were in fact not private lines but common carriers." And this holding was emphasized by its decision with reference to the Uncle Sam Oil Company. That company was exempt from the operation of the act because it was not a common carrier. We are in exactly the position as was the Uncle Sam Oil Company.

Since the decision in the Pipe Line Cases, the Supreme Court of the United States has passed upon the California statute, very similar to section 4309 of the Revised Laws of 1910, and while it upheld the order of the Railroad Commission of that State it took occasion to say:

"It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts, and never was devoted by its owner to public use, that is, to carrying for the public, the State could not, by mere legislative fiat, or by any regulating order of a commission, convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation which no state can do consistently with the due process of law clause of the 14th Amendment. On the other hand, if in the beginning, or during its subsequent operation, the pipe line was devoted by its owner to public use, and if the right thus extended to the public has not been withdrawn, there can be no doubt that the pipe line is a public utility and its owner a common carrier whose rates and practices are subject to public regulation."

Therefore, even if it were true that the Pierce Oil Corporation "carried oil for hire for other persons through its lines" it did so under private contracts, and the Commission expressly found that "never held itself out as a common carrier of oil," and never
 170 "pretended that their line was a common carrier line or that they made a general business of carrying oil for the public." In view of these findings of fact, which are binding on this Court and are wholly opposed to the idea that our line "was devoted to its owner to public use, that is, to carrying for the public," we are squarely within the decision of the Supreme Court in the case last above cited, and are not a common carrier either in fact or by virtue of the statute.

Wherefore, Plaintiffs in error pray that the opinion of May 2, 1920, be recalled and vacated, and that they be granted a rehearing herein.

Respectfully submitted,

WEST, SHERMAN, DAVIDSON & MOORE
 BOYLE & PRIEST,

Attorneys for Plaintiffs in Error.

171 And thereafter, to wit: on this 6th day of July, 1920, before the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, June Term, 1920, July 6th, 1920, Ninth Judicial Day.

10550.

PIERCE OIL CORPORATION et al., Plaintiffs in Error,

vs.

PHOENIX REFINING CO. et al., Defendants in Error.

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

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Certificate.

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 171 pages, numbered from 1 to 171, inclusive, is a true and complete transcript of the record and all proceedings in said Supreme Court in the case of Pierce Oil Corporation, et al. plaintiffs in error vs. Phoenix Refining Company, defendant in error, No. 10,550, as the same remains upon the files and records of said Supreme Court.

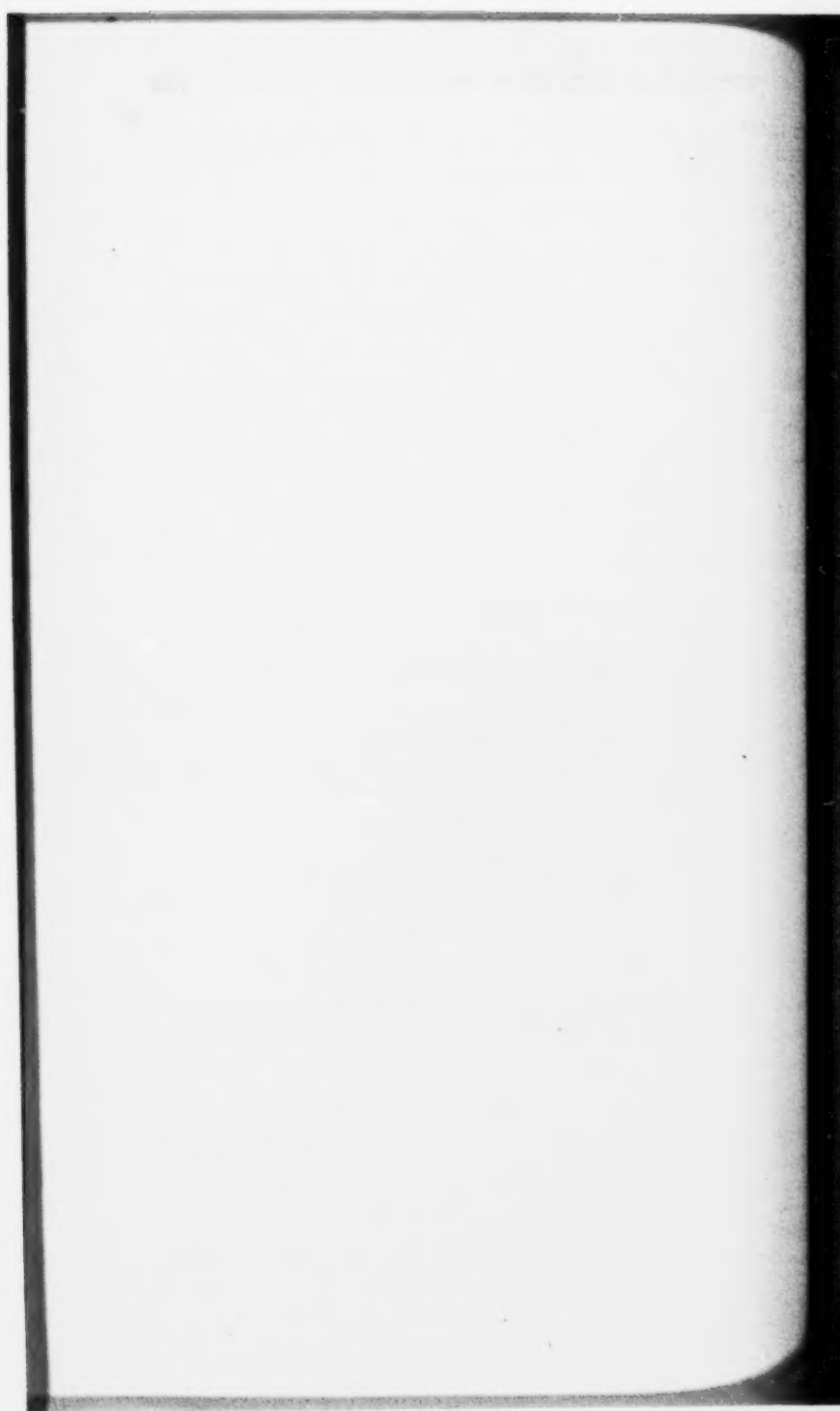
In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 6th day of November, A. D. 1920.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma.
By REUEL HASKELL, JR.,
Deputy.

Endorsed on cover: File No. 27,979. Oklahoma Supreme Court. Term No. 622. Pierce Oil Corporation and Clay Arthur Pierce, Plaintiffs in error, vs. Phoenix Refining Company. Filed November 6th, 1920. File No. 27,979.

(3646)



1. Name of the person or organization to whom the money is to be paid.

2. The amount of money to be paid.

3. The date when the money is to be paid.

4. The name of the person or organization who is to pay the money.

5. The name of the person or organization who is to receive the money.

6. The name of the person or organization who is to sign the check.

7. The name of the person or organization who is to endorse the check.

8. The name of the person or organization who is to deposit the check.

9. The name of the person or organization who is to cash the check.

IN THE
SUPREME COURT OF THE UNITED STATES.
October Term, 1921.

No. 622

PIERCE OIL CORPORATION AND CLAY ARTHUR
PIERCE, *Plaintiffs in Error,*

vs.

PHOENIX REFINING COMPANY,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

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Under the Corporation Commission's findings of fact, which were not disturbed by the Supreme Court on appeal, Pierce Oil Corporation is not a common carrier in fact and has never devoted its pipe line to public use, but, on the contrary, it built such line, and with unimportant exceptions, has used it as an adjunct to its refinery and for supplying the latter with crude oil. The order of the Commission is the result of its construction of the state statute and its applica-

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tion to Pierce Oil Corporation under which the latter was held to the duty of a common carrier, notwithstanding it was not such a carrier in fact, and such construction of the statute and its application to Pierce Oil Corporation, approved in effect by the decision of the Supreme Court of Oklahoma, brings it into conflict with the Fifth and Fourteenth Amendments to the Federal Constitution and deprives Pierce Oil Corporation of its property without due process of law..... 7

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IN THE
SUPREME COURT OF THE UNITED STATES.
October Term, 1921.

No. 622

PIERCE OIL CORPORATION AND CLAY ARTHUR
PIERCE, *Plaintiffs in Error,*
vs.
PHOENIX REFINING COMPANY,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement.

This case involves the construction of certain statutes of Oklahoma, particularly Section 4309 of the Revised Laws of 1910, which provides:

“Oil Carriers are Common Carriers—Discrimination prohibited. Every corporation, joint stock company, partnership or person engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within the state, and by virtue of and in conformity to any

valid law incapable of revocation by any laws of this state or of the United States, or by virtue of and in conformity to the provisions of this article, shall be deemed a common carrier thereof as at common law; and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage, or delivery of any crude, stock or storage oil, or any product thereof, in its possession or control, or in which it may be interested, directly or indirectly."

In 1913, the plaintiff in error, Clay Arthur Pierce, the predecessor of Pierce Oil Corporation, then operating a refinery at Sand Springs, Oklahoma, for the refining of crude oil and marketing its products, built a pipe line connecting the refinery with the Cushing oil field, a distance of about thirty-three miles. The line was built as a private line for the purpose of supplying the needs of the refinery. The capacity of the plant is the same as that of the pipe line, namely, 10,000 barrels per day, although at the time of the construction of the line the plant capacity was 8,000 barrels. The right of way of the line was obtained by private purchase. The pipe line and the plant have continued to be used at all times by the owners as a private business. A portion of the oil carried by the Pierce Oil Corporation in its lines is the product of its own wells but the amount so produced is insufficient to meet the requirements of the refining business and the deficiency is supplied by purchase of crude oil in the open market.

Phoenix Refining Company is the owner of a refinery at Sand Springs adjacent to that of Pierce Oil Corporation, and for a year or two, and while not in need of the full capacity of the line, oil was carried by Pierce Oil Corporation for Phoenix Refining Company at a price of 10 cents per barrel, a compensation which is much less than the usual rate charged by common carrier pipe lines. This transportation was done under private contract and the great bulk of the oil so carried was oil purchased by Phoenix Refining Company from Tidal Oil Company, a producer, and a half interest in which was purchased by Pierce Oil Corporation and therefore owned by them in common. Some oil also appears to have been carried occasionally in the line for one or two other persons but merely as an accommodation to them, the record being silent as to the number of such occasions or under what circumstances such oil was carried or whether any charge was made for the transportation.

On February 26, 1918, Pierce Oil Corporation gave Phoenix Refining Company notice that beginning on that date, the charge for transporting its oil would be 20 cents per barrel and that after March 21st it would not be able to run any oil for it at all, as the entire capacity of the line would be required for its refinery. On the 8th day of March, 1918, Phoenix Refining Company made application in writing to the Corporation Commission of Oklahoma to compel Pierce Oil Corporation to carry its oil and to fix

the compensation for such services. Its complaint or petition filed with the Commission is set forth at pages 10 to 12 of the transcript. Pierce Oil Corporation resisted the application on the ground that it was not a common carrier in fact and that the order prayed for would amount to a taking of its property without due process of law. Its answer is set forth at pages 14 to 19 of the transcript.

After a hearing in the matter the Corporation Commission, while finding that Pierce Oil Corporation had never devoted its line to public use, or even pretended that it was a common carrier, nevertheless made the order prayed for insofar as the transportation of oil was concerned but declined to fix the compensation, basing its ruling and decision on the ground that Pierce Oil Corporation was within the terms of the state statute, and construing such statute to have the effect to make all persons in the situation of Pierce Oil Corporation common carriers.

The Supreme Court of the State, on appeal, affirmed the order and judgment of the Commission, and this proceeding is prosecuted, by writ of error, to reverse that judgment.

Plaintiffs in error contend that the meaning imputed to, and the construction placed upon, the Oklahoma statute by the Corporation Commission and the application of the statute so construed to Pierce Oil Corporation, and the approval of its order and conclusion in the premises by the Supreme Court of Oklahoma, and by which Pierce Oil Corporation

was held to the duty and obligation of a common carrier had the effect to bring such statute into conflict with the Constitution of the United States and to deprive the Pierce Oil Corporation of its property without due process of law.

SPECIFICATIONS of ERROR.

First.

The court erred in holding and deciding that Section 4309 of the Revised Laws of Oklahoma of 1910, being Section 4 of an Act of the Legislature of Oklahoma, entitled:

“An Act to regulate all corporations, associations and persons engaged, in this state, in the business of carrying crude petroleum, or its products, through pipe lines; to regulate operators of oil wells and refineries of crude petroleum and its products, regulating the purchasing of mineral oil by pipe lines, providing punishments for violations thereof, and declaring an emergency,”

approved March 27, 1909, was, as applied to the facts shown by the record herein, constitutional and did not violate the Fifth or Fourteenth Amendments to the Constitution of the United States, and did not deprive the plaintiffs in error of equal protection of the law.

Second.

The court erred in holding and deciding that the judgment and order of the Corporation Commission

lic, nor is it disputed that such oil as was transported for others was done as a matter of accommodation and under private contract. Such are the facts found by the Commission, and which we here set out:

“The evidence shows that it has been the custom of Pierce Oil Corporation to carry oil for others through this line in question but defendants’ testimony is to the effect that such oil was carried partly as a matter of reciprocal obligation, or accommodation. The facts do not show that defendants have ever pretended that their line was a common carrier line or that they made a general business of carrying oil for the public. Oil was carried for consideration through this line by the defendants when it could be done without inconvenience.

* * * * *

“The evidence further shows that the complainant has contracted with the Pierce Oil Corporation from time to time for the carrying of oil from the Cushing field through the line in question to complainant’s refinery at Sand Springs, and that a contract of this character was in effect when the production of the Cushing field was considerably greater than it is at present time, and that oil was also carried for hire for other persons through said line.

“The evidence further shows that the oil, owned by the Pierce Oil Corporation and carried by it through its line is generally purchased from other persons and that sometime prior to the filing of the complaint herein it secured a contract with the Tidal Oil Company for a certain amount of production through competitive bidding, in which complainant was one of the bidders. This may or may not have led to the

application of the Pierce Oil Corporation to be exempted from the laws governing common carriers, in reference to the pipe line in question, and to the present controversy.

"The Commission finds that the line in question was constructed for the primary purpose of carrying crude oil to defendants' refinery at Sand Springs, Oklahoma; that the Pierce Oil Corporation has never held itself out as a common carrier of oil, but that it has carried oil for other persons through its line for hire, when convenient to it to do so; that the oil which the Pierce Oil Corporation carries to its refinery at Sand Springs through this line is generally purchased from other producers, and in competition with other purchasers.

"There is some conflict in the testimony as to whether or not there are other lines available through which complainant might have its oil transported from the Cushing field to Sand Springs, but the conclusion of the Commission, from the study of the testimony is, and the Commission so finds, that at the time of the hearing there was no other practicable or available line through which complainant could have its crude oil transported from its well in the Cushing field to its refinery at Sand Springs." (Tr., p. 69.)

It is of course not necessary to comment on the meaning of the term common carrier. Its significant features are that it must be the business, or at least the main and principal business, of the persons engaged in it, and that it must be an avowed public occupation.

—Moore on Carriers, Vol. 1, p. 22;

Hutchinson on Common Carriers, Par. 47;
Parsons on Shipping and Admiralty, Vol.
1, p. 245;

Dwight v. Brewster, 1 Pick. (Mass.) 50;

United States v. Sioux Stock Yards Co.,
162 Fed. 556;

Fish v. Chapman, 2 Ga. 342.

In Story on Bailments, Par. 495, it is said:

“To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally, and he must hold himself out as ready to engage in the transportation of goods for hire as a business, not as a casual occupation *pro haec vice*.”

In *Producers' Transportation Co. v. Railroad Commission*, 251 U. S. 228, this court had occasion to consider the application of a California statute very similar to Section 4309 of the Oklahoma Revised Laws of 1910, and while it sustained the order of the Railroad Commission in that case, it did so on the ground that Producers' Transportation Company had voluntarily devoted its pipe line to the use of the public and that it had acquired its right of way by the exercise of the power of eminent domain and that in condemnation proceedings it had asserted and obtained a judgment that it was engaged in the business of a common carrier for hire and that it had in truth carried oil for all producers seeking its service. But in the course of its opinion it took occasion to say:

"It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts and never was devoted by its owner to public use, that is, to carrying for the public, the state could not by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the Fourteenth Amendment."

The transportation of oil through its pipe line is not the business of Pierce Oil Corporation but is only incident to and part of its business of refining. It never exercised the business of transporting oil as a public employment, or undertook to carry oil generally and for all persons indifferently. On particular occasions it carried oil as a matter of accommodation for others, mainly for Phoenix Refining Company under a strictly private contract. Such other acts of transportation as the record discloses were casual, and discriminated as to the persons using the line. In acquiring its right of way it never resorted to an exercise of the power of eminent domain. At no time did it assert or pretend that it was a common carrier. All of this being true, its pipe line could not be converted into a public utility by a mere legislative fiat or by any order of the Corporation Commission. Such, however, is the meaning and effect given to the statute by the Com-

mission, for after expressly finding that Pierce Oil Corporation was not and had never been a common carrier in fact, it said:

"The duty of the Commission, therefore, is to apply the law to the facts found and to determine whether or not the Pierce Oil Corporation has any liability or duty as a common carrier. In determining this question, the Commission will consider the law enacted by our Legislature and the court decisions cited in briefs filed by the attorneys herein.

"The law, upon which complainant relies for relief, is found in Sec. 4, Art. 9, Constitution of Oklahoma, Ch. 52, Secs. 4304-4318, Revised Laws, 1919; Secs. 562-576, Corporation Commission Laws, 1917, Sec. 4, Art. 9, Const." (Tr., p. 70.)

After quoting the various sections referred to, the Commission said:

"We have not been advised of decisions of our own courts or of the courts of other states construing these or similar laws in reference to a state of facts similar to those herein, but the Supreme Court of the United States, in the case of *United States v. Ohio Oil Company*, 234 U. S. 548, 58 L. ed. 1459, decided a somewhat similar state of facts and applied thereto the federal pipe line laws pertaining to common carriers.

"The federal law is not broader than our state laws and does not give to the federal government or to the Interstate Commerce Commission greater powers than is given to our state government and our Corporation Commission.

"The Standard Oil Company, through its subordinates, was engaged in the business of transporting oil from the oil fields in the central and western portion of the United States to its refineries in the east. The oil which it transported was generally purchased by it in competition with other bidders. It had a monopoly on the transportation business. The question then was, whether or not it was a common carrier and could be required to carry oil for other persons."

After quoting at length from the opinion of the court in the case referred to the Commission came to the conclusion that the pipe line of Pierce Oil Corporation came within the decision. It put Pierce Oil Corporation in the same class as the Standard Oil Company and its subsidiaries, and refused to recognize the contention that it was in the position of Uncle Sam Oil Company, one of the appellees in the case cited and to which the federal statute was held inapplicable. The distinction made between Uncle Sam Oil Company and the other appellees in that case was that the latter were transporters rather than purchasers of oil, and were common carriers in everything but form; that the amendment to the federal act regulating commerce was applicable to them, and was not unconstitutional as it did not compel a different use of the lines than that to which their owners had already dedicated them, and that such amendment only required, such being the very purpose of its passage, that the petitioners must give up prescribing their own conditions to the con-

duct of the business of transportation, that is by compelling a sale of oil to themselves before accepting it for transportation, while Uncle Sam Oil Company, according to the majority opinion, was not engaged in transportation but merely carried oil to its refinery to be refined and its products sold in the open market. Chief Justice WHITE, in a concurring opinion dissented from the view that Uncle Sam Oil Company was not engaged in the transportation of oil as it was in point of fact carrying oil from one state to another, but expressed the view that as its transportation of oil was a private business, the statute could not be applied to it without violating the due process clause of the Fifth Amendment. The effect of the Corporation Commission's decision and of its order is to compel a use of the Pierce Oil Corporation's line to which it had never been dedicated, a use different from that which the Commission itself had found as a fact. The Commission found that Pierce Oil Corporation was not engaged in the business of carrying oil for the public and had never devoted its line to such use, yet by its order it compelled them to go into that business, for of course, if the Phoenix Refining Company had the right to have its oil carried in the line independent of mutual agreement, then all other owners of oil had the same right.

The reasons given by the Corporation Commission for its classification of Pierce Oil Corporation with the Standard Oil Company and its subsidia-

ries in the *Pipe Line* cases, are that the Pierce Oil Corporation "has a monopoly of the oil carrying business between the Cushing field and Sand Springs" and that it is not "within the facts applicable to the Uncle Sam Oil Company" because it did not transport merely its own production but purchased oil in the market which it ran through its line.

The word monopoly has no place in this argument. Its employment, however, marks the Commission's confusion of mind on this court's decision in the *Pipe Line* cases. There the Standard Oil Company was held to have a monopoly of the business of transporting crude oil because of its combination with and consequent control of the public transcontinental pipe lines. But as Pierce Oil Corporation is not engaged in the business of transporting oil for the public, it is inconceivable that the term monopoly has any application. The fact that its refinery is the only one in Sand Springs having a pipe line in connection with its operation does not give its neighbor Phoenix Refining Company the right to its use because the latter has no line of its own. That would be nothing else than communism.

The conclusion of the Commission that Pierce Oil Corporation is not in the situation of Uncle Sam Oil Company is based upon the language of Chief Justice WHITE in his concurring opinion in the *Pipe Line* cases. Referring to Uncle Sam Oil Company, he said:

“It is shown beyond question that the Company buys no oil, and by the methods which have been mentioned simply carries its own production to its own refinery; in other words, it is engaged in a purely private business.”

The statement that the Uncle Sam Oil Company “buys no oil,” means only that it did not buy in the sense that the others did, *i. e.*, as a condition of its transportation. It appears in that case that the Standard Oil Company of New Jersey owned the stock of the New York Transit Company, a common carrier, and of the National Transit Company, a corporation of like character, and that it also owned all, or a great part of the stock in the other appellee corporations, and that by reason thereof, and its practical ownership of these lines, it made itself master of and controlled the transportation of oil across the continent, and the court found that it and its subsidiary companies “carried everybody’s oil to a market,” and “were carrying all oil offered if only the offerers would sell at their price” and that they were in fact “common carriers in everything but form.” Under these circumstances this court held the Interstate Commerce Commission had jurisdiction to inquire into and fix the charges for transportation. The Uncle Sam Oil Company was, however, held not to be subject to its jurisdiction because it was not buying or transporting everybody’s oil that offered it, as the other companies were. It was carrying its own oil to its own refinery to be refined and the refined products placed on the

market. Its business, if a transportation business at all, was private, not public. This is exactly the situation of the Pierce Oil Corporation. We are unable to see any distinction between the cases because of the fact that a portion of the oil which is run through the pipe line of Pierce Oil Corporation is oil *purchased* and not oil *produced* by it, and a case decided by the Supreme Court of California takes a similar view: *Associated Pipe Line Company v. Railroad Commission*, 169 Pac. 62. The Railroad Commission of California, on its own initiative, sought to bring the Associated Pipe Line Company within the provision of the state statute regulating common carriers. The Supreme Court of the state held that it was not a common carrier and in the course of its opinion said (italics ours):

“That the Associated Pipe Line Company has never at any time since the construction of its pipe line, been devoted to the carrying of oil or oil products other than those *produced* by the Associated Pipe Line Company or *purchased* in the oil field by it in its business of producing, buying and selling both in crude and refined forms.”

It is not disputed that Pierce Oil Corporation is producing oil, but surely the mere fact that it is not producing a sufficient amount for its refinery needs and which makes it necessary to supply the deficiency by purchase from others cannot constitute it a common carrier, or convert its private business into a public one. The language of Chief Justice WHITE is not susceptible of such a construction.

The Supreme Court of the state, as stated, affirmed the order of the Commission. It refused to rule, although pressed to do so, as will appear from the discussion of that question in its opinion (page 94 of the transcript), that the Commission's construction of the state statute brought it into conflict with the federal constitution, putting its refusal on the ground that as the pipe line had been built after the statute was enacted, Pierce Oil Corporation was estopped to urge the constitutional question. Of course such a decision, in effect, adopted the Commission's construction of the statute and brought us within its terms. The Supreme Court might just as well have said, and in effect did say: You knew, when you built your line, what the statute provided, to-wit, that "every corporation * * * engaged in the business of carrying or transporting crude oil * * * for hire or otherwise by pipe line * * * shall be deemed a common carrier." You knew there could be no such thing under the statute as a private pipe line for the exclusive use of its owner. If you persisted in operating a refinery after the statute was passed, you should have moved it to the terminus of a common carrier line, or transported your crude oil by wagon or by rail. If you had built your line before the statute was passed the law could not have reached you and in such case your line would have been private property, but you built it in the face of the statute and, under the statute, there could be no private property in a pipe line, even if intended for private use. The lan-

guage of Justice HOLMES must be applied to the facts in that case. We think the language was used by way of illustrating the argument. He simply supposed a case where there could be no room for disagreement, namely, that no pipe line serving the public whose business was established after the amendment to the act could refuse to transport oil except upon a condition which it was the very purpose of the amendment to prohibit. Now if that were true as to them, and which nobody could deny, then Congress had power to prescribe the condition and the act was constitutional. It could not therefore be unconstitutional as to existing pipe lines which were in exactly the same situation as pipe lines established after the act was passed. Both are common carriers engaged in a business which was subject to congressional control. To say that the question whether a common carrier is subject to legislative control is to be determined by the fact whether or not his business was established before or after the enactment of the legislation, is to state a proposition which has no support in reason or authority. The right of public control exists in one case as well as the other, and of course in neither case is there any taking of property within the meaning of the constitution. So it is clear that the act applied in that case, and was held to apply, only to those who are common carriers in fact engaged in the business of carrying oil for the public by means of pipe lines. Pierce Oil Corporation is not engaged in such business as the record conclusively shows.

It was contended in the argument of counsel for Phoenix Refining Company that the state statute made every person transporting oil by means of a pipe line a common carrier, and that otherwise "no useful purpose had been served by its passage, because it would only declare those pipe lines common carriers which were, under the common law, previous to its passage, actually common carriers, and as to such lines, they could be made to carry every one's oil anyhow." Evidently the Supreme Court of Oklahoma took that view in approving the Commission's decision. That was the very contention of the government in the *Pipe Line* cases, namely, that the legislation was intended to make private pipe lines common carriers, and the reasoning of the government was substantially the same, that is, that there could be no purpose in making pipe lines common carriers which were already common carriers without such legislation. The inevitable result of such reasoning would be to hold, as the Commerce Court did (204 Fed. 797) that such a statute so construed was in excess of legislative authority and void. This court, however, refused to place such a construction upon the amendment to the act and held that it applied to the pipe line companies in that case because "they were in fact not private lines but common carriers," and this holding is emphasized by its decision with reference to Uncle Sam Oil Company, which was held not to be within the act because it was not a common carrier.

We think the Corporation Commission and the Supreme Court of Oklahoma misapprehended the decision in the *Pipe Line* cases. Ordinarily this would not be important, but it is evident that these two tribunals acted upon the idea that as the amendment to the federal act regulating commerce was held to be a valid exercise of legislative power, the same construction and application should be given to the state statute here involved. But this court applied the federal statute to the Standard Oil Company and its subsidiaries in that case, and held it to be constitutional as to them, only because they were in fact common carriers and had devoted their lines to public use, except for which the act would be unconstitutional and was unconstitutional as applied to Uncle Sam Oil Company. A like construction and application of the state statute to Pierce Oil Corporation, which was expressly found not to be a common carrier in fact and had never devoted its line to public use, would bring the statute into conflict with the due process clause of both the Fifth and Fourteenth Amendments.

We therefore respectfully submit that the judgment of the Supreme Court of Oklahoma should be reversed.

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Attorneys for Plaintiffs in Error.

Opinion of the Court.

PIERCE OIL CORPORATION ET AL. v. PHOENIX
REFINING COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 172. Argued March 17, 1922.—Decided May 15, 1922.

Action of a State requiring a foreign corporation to operate its local, private oil pipe line as a common carrier does not deprive it of property without due process of law when done pursuant to constitutional and statutory provisions in force when the corporation entered the State and by it accepted in applying for and obtaining the privilege of doing local business. P. 127.

79 Okla. 36, affirmed.

ERROR to a judgment of the Supreme Court of Oklahoma affirming, on appeal, an order of the State Corporation Commission, requiring the plaintiff in error to operate its oil pipe line as a common carrier.

Mr. Preston C. West, with whom *Mr. George T. Priest*, *Mr. Wilbur F. Boyle*, *Mr. Henry S. Priest* and *Mr. A. A. Davidson* were on the brief, for plaintiffs in error.

No appearance for defendant in error.

MR. JUSTICE CLARKE delivered the opinion of the court.

In 1913 the defendant in error, the Phoenix Refining Company (herein designated the Phoenix Company), a corporation organized under the laws of Oklahoma, erected an oil refinery at Sand Springs, in that State. In the same year the plaintiff in error, the Pierce Oil Corporation (herein designated the Pierce Company), a corporation organized under the laws of Virginia, erected a refinery at Sand Springs, and also constructed a pipe line, wholly within the State of Oklahoma, to the Cushing Oil Field, a distance of thirty-three miles.

Beginning in 1915, the Pierce Company transported oil for the Phoenix Company through its pipe line from the

Cushing Field to its refinery, under annual written contracts, prescribing rates and conditions, until in February, 1918, when it informed that company that it would not carry its oil on any terms after the 21st of the following March.

Thereupon the complaint in this case was filed with the Corporation Commission of Oklahoma, praying that the Pierce Company be declared to be a common carrier of oil and that it be ordered to transport oil for the Phoenix Company from the Cushing Field to its refinery at a charge to be fixed. The Pierce Company, in its answer, averred: that it had constructed its pipe line to supply its own refinery only, and that it was not, and had never held itself out to be, a common carrier of oil; that it had carried oil for the Phoenix Company as a matter of accommodation only; and that to subject it to the duties and responsibilities of a common carrier would result in the taking of its property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

After an elaborate hearing, the Corporation Commission held: that the Pierce Company had carried oil for the Phoenix Company and for various others for several years at rates agreed upon; that its pipe line was the only available and practicable line by which the Phoenix Company could procure oil from the Cushing Field for its refinery; that the Pierce Company, in competition with others, purchased oil in the Cushing Field, which it transported to its refinery at Sand Springs; and that it had a monopoly of the oil-carrying business between the Cushing Field and Sand Springs. As a result, it was held that the Pierce Company was a common carrier of oil, as defined in the Oklahoma laws, and it was ordered to carry such oil as the Phoenix Company was then producing in the Cushing Field and such other oil as the Pierce Company might have available space or capacity to transport

in its line, from the Cushing Field to Sand Springs. Because the evidence was not deemed sufficient no order was made as to rates.

On appeal, the State Supreme Court found that there was substantial evidence to support the order of the Corporation Commission and affirmed it, but it also held that the Pierce Company, having qualified and entered Oklahoma to do business long after the state constitution was adopted and after the statutes of the State, under which the order was made, were enacted, it would not be heard to contend that it was deprived of its property thereby without due process of law in the constitutional sense.— This last conclusion is sufficient to dispose of the case here.

The State of Oklahoma was admitted into the Union in 1907, with a constitution theretofore adopted by the people, which provided for a Corporation Commission, with large powers of regulation and supervision over oil pipe and other transportation companies doing business in the State (Article IX, §§ 15 to 35, inclusive), and in 1909 there were enacted various statutes, now collected in c. 53, Article II, of the Revised Laws of Oklahoma, 1910, applicable to oil pipe lines.

These statutes declared that, except as authorized therein, no corporation (domestic or foreign) should have the right to engage in the business of transporting crude petroleum through pipe lines within the State "for hire or otherwise" (§ 4304), and that every corporation engaged in such business under the state laws should "be deemed a common carrier thereof, as at common law" (§ 4309). It was also provided that before any corporation should be entitled to the provisions of the acts it must file with the State Corporation Commission an "authorized acceptance of the provisions of this article and the constitution of this State" and a plat showing the location and capacity of the company's pipe line. (§ 4311).

This constitution and these laws had been in effect for five years when the Pierce Company, by applying for and obtaining the privilege of conducting its business operations within the State, elected to respect and obey them, and therefore when it engaged in the business of transporting crude petroleum through pipe lines in the State it must necessarily be subject to the duties and obligations of "a common carrier thereof as at common law", and the order complained of required this only to a limited extent.

When the large discretion which the State had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intrastate business is considered (*National Council U. A. M. v. State Council*, 203 U. S. 151, 163; *Pullman Co. v. Kansas*, 216 U. S. 56, 66; *Baltic Mining Co. v. Massachusetts*, 231 U. S. 68, 83), the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. "By accepting the privilege it voluntarily consented to be bound by the conditions" attached to it (216 U. S. 56, 66), and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the State, is unconstitutional. A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the *Pipe Line Cases*, 234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."

There is nothing in the nature of such a constitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by delib-

125.

Syllabus.

erate election or by conduct inconsistent with the assertion of such a right. *Pierce v. Somerset Railway*, 171 U. S. 641, 648; *Wall v. Parrot Silver & Copper Co.*, 244 U. S. 407, 411.

The prior order of the Commission, exempting the Pierce Company from the obligations of a common carrier was made on an ex parte application and was expressly subject to revocation at any time, so that it was and is entirely idle to claim that it constituted any obstacle to the entry by the Commission of the order complained of in this case.

It results that the judgment of the Supreme Court of Oklahoma must be

Affirmed.
